

08:33:09 1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

3 UNITED SERVICES AUTOMOBILE) (
ASSOCIATION) (CIVIL ACTION NO.
4 VS.) (2:18-CV-366-JRG
5) (MARSHALL, TEXAS
JANUARY 10, 2020
6 WELLS FARGO BANK, N.A.) (8:33 A.M.
7
8

9 TRANSCRIPT OF JURY TRIAL

10 ALL DAY

11 BEFORE THE HONORABLE CHIEF JUDGE RODNEY GILSTRAP,
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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34
35 (Proceedings recorded by mechanical stenography, transcript
36 produced on a CAT system.)

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1 P R O C E E D I N G S
08:33:10 2 (Jury out.)
08:33:10 3 COURT SECURITY OFFICER: All rise.
08:33:12 4 THE COURT: Be seated, please.
08:34:28 5 Are the parties prepared to read into the record
08:34:36 6 those items from the list of pre-admitted exhibits used
08:34:40 7 during yesterday's portion of the trial?
08:34:42 8 MR. BUNT: Yes, Your Honor, we are.
08:34:44 9 THE COURT: All right. Please proceed.
08:34:46 10 MR. BUNT: Your Honor, there were two Plaintiff's
08:34:50 11 exhibits that came in yesterday. Those were PX-6 and PX-7.
08:34:54 12 THE COURT: Any objection to that rendition from
08:34:58 13 the Defendant?
08:34:58 14 MR. UNDERWOOD: No objection, Your Honor.
08:34:59 15 THE COURT: Does Defendant have a similar
08:35:02 16 rendition to offer for the record?
08:35:03 17 MR. UNDERWOOD: Defendant does not.
08:35:06 18 THE COURT: All right. Thank you.
08:35:21 19 Mr. Sheasby, who's going to present closing
08:35:23 20 arguments for the Plaintiff?
08:35:24 21 MR. SHEASBY: Your Honor, Mr. Bunt and I will be
08:35:28 22 jointly presenting the closing arguments. Mr. Bunt would
08:35:30 23 like a warning at seven minutes.
08:35:31 24 THE COURT: Mr. Bunt will go first?
08:35:33 25 MR. SHEASBY: Mr. Bunt will go first. We're going

08:35:35 1 to have 25 minutes in the opening, 15 in rebuttal.

08:35:39 2 Mr. Bunt would like a warning at seven minutes, and I would

08:35:44 3 like a warning at 20 minutes used, so five-minute, which is

08:35:54 4 probably an easier way of saying it.

08:36:00 5 And then in my rebuttal, I'd also respectfully

08:36:03 6 request a seven-minute warning.

08:36:06 7 THE COURT: All right. So in the first

08:36:08 8 Plaintiff's closing argument, both of you are going to

08:36:12 9 argue?

08:36:12 10 MR. SHEASBY: Yes.

08:36:13 11 THE COURT: And Mr. Bunt is going to start?

08:36:14 12 MR. SHEASBY: Yes.

08:36:15 13 THE COURT: And I'm going to warn Mr. Bunt when

08:36:17 14 he's used seven minutes?

08:36:19 15 MR. SHEASBY: Yes, Your Honor.

08:36:20 16 THE COURT: And then you all will decide when he

08:36:22 17 stops and when you start?

08:36:23 18 MR. SHEASBY: Yes, Your Honor.

08:36:24 19 THE COURT: And then you'd like a warning at what

08:36:26 20 point after that?

08:36:27 21 MR. SHEASBY: Five minutes left, Your Honor.

08:36:29 22 THE COURT: At 20 minutes?

08:36:30 23 MR. SHEASBY: Yes, yes, Your Honor.

08:36:31 24 THE COURT: At 20 minutes used. And then you'll

08:36:35 25 do the final close -- --

08:36:36 1 MR. SHEASBY: Yes, Your Honor.

08:36:37 2 THE COURT: -- closing argument? And on that you

08:36:40 3 want five minutes remaining?

08:36:43 4 MR. SHEASBY: Yes, Your Honor.

08:36:44 5 THE COURT: All right. Mr. Melsheimer, who's

08:36:51 6 going to present closing arguments for Defendant?

08:36:53 7 MR. MELSHEIMER: Your Honor, I will, along with

08:36:55 8 Ms. Williams.

08:36:58 9 THE COURT: And you want warnings on your time?

08:37:01 10 MR. MELSHEIMER: I do, Your Honor. I would

08:37:03 11 like -- we're going to split it 20/20.

08:37:07 12 THE COURT: You're going to begin?

08:37:08 13 MR. MELSHEIMER: I am.

08:37:09 14 THE COURT: Okay.

08:37:09 15 MR. MELSHEIMER: And so I would like a warning

08:37:11 16 when I've used 15 minutes of my 20, and Ms. Williams would

08:37:15 17 like a warning when she has used 15 minutes of her 20.

08:37:20 18 THE COURT: Well, I don't have any way of knowing

08:37:22 19 that you will stop exactly on 20 minutes and she will

08:37:26 20 start. So I'll warn you when 15 minutes have been used.

08:37:30 21 That will tell you you've got five minutes remaining. You

08:37:34 22 will either stop at exactly 20 minutes or you'll keep going

08:37:37 23 or you'll stop early. But whenever you stop, she'll start,

08:37:41 24 and I'll warn her when she has five minutes left. Will

08:37:44 25 that work?

08:37:44 1 MR. MELSHEIMER: That will work. There's --
08:37:46 2 there's grave concern on this side that I will keep
08:37:47 3 talking.

08:37:48 4 THE COURT: That had nothing to do with the
08:37:49 5 questions I asked.

08:38:14 6 All right. Just to make sure I have this right.
08:38:17 7 Plaintiff's first closing argument, Mr. Bunt will begin.
08:38:20 8 I'll warn him when he has used seven minutes. At some
08:38:24 9 point, he and Mr. Sheasby will tag out, and I'll tell
08:38:29 10 Mr. Sheasby when 20 minutes have been used.

08:38:33 11 Then for Defendant's closing, Mr. Melsheimer will
08:38:37 12 start. I'll tell him when 15 minutes have been used. He
08:38:41 13 and Ms. Williams will tag in and out, and when she has five
08:38:47 14 minutes left, I will tell her.

08:38:48 15 On Plaintiff's final closing, whatever time is
08:38:51 16 left -- Plaintiff will have, and I'll tell Mr. Sheasby when
08:38:54 17 he has five minutes remaining.

08:38:56 18 Do I have that right?

08:38:57 19 MR. SHEASBY: Yes, Your Honor.

08:38:59 20 MR. MELSHEIMER: You do, Your Honor.

08:39:00 21 THE COURT: Okay. Thank you.

08:39:01 22 Do either Plaintiff or Defendant have anything
08:39:06 23 else that the Court needs to hear before I bring in the
08:39:09 24 jury and we begin with the Court's final jury instructions?

08:39:12 25 MR. SHEASBY: Nothing from Plaintiffs, Your Honor.

08:39:13 1 MR. MELSHEIMER: Nothing here, Your Honor.

08:39:14 2 THE COURT: All right. I will say this before I

08:39:18 3 bring in the jury, and this is directed not only to counsel

08:39:22 4 but everyone present, including our guests behind the bar.

08:39:27 5 The Court's final instructions to the jury and

08:39:29 6 counsel's closing arguments are, in the Court's view, the

08:39:35 7 most serious part of a very serious process.

08:39:38 8 Those of you that are behind the bar in the

08:39:40 9 gallery, I don't want any whispering. I don't want any

08:39:43 10 talking. I sure don't want to hear any cell phone noises.

08:39:48 11 And if you need to get up to come and go, get up and come

08:39:55 12 and go now.

08:39:56 13 I don't want people walking in and out of the

08:39:57 14 courtroom unnecessarily. I want people to remain as quiet

08:39:58 15 and as still as possible. I don't want anything that might

08:40:00 16 distract the jury from my final instructions to them or

08:40:04 17 from counsels' closing arguments.

08:40:06 18 All right. With that, let's please bring in the

08:40:10 19 jury.

08:40:21 20 COURT SECURITY OFFICER: All rise.

08:40:22 21 (Jury in.)

08:40:23 22 THE COURT: Good morning, ladies and gentlemen.

08:40:40 23 Please be seated.

08:40:40 24 Ladies and gentlemen of the jury, you've now heard

08:40:56 25 the evidence in this case. And I'll now instruct you on

08:40:59 1 the law that you must apply.

08:41:01 2 Each of you, as I told you yesterday, will have
08:41:05 3 your own printed copy of these final jury instructions.
08:41:09 4 You're welcome -- you're welcome to make notes as I give
08:41:12 5 these instructions to you orally, but I want you to
08:41:14 6 understand, you'll have your own printed copy for your own
08:41:17 7 review in the jury room when you retire.

08:41:19 8 It's your duty to follow the law as I give it to
08:41:25 9 you. On the other hand, ladies and gentlemen, as I've said
08:41:29 10 previously, you, the jury, are the sole judges of the facts
08:41:33 11 in this case.

08:41:35 12 Do not consider any statement that I have made
08:41:37 13 over the course of the trial or that I make during these
08:41:40 14 instructions as an indication to you that I have any
08:41:44 15 opinion about the facts.

08:41:46 16 You're about to hear closing arguments from the
08:41:49 17 attorneys in the case. Statements and arguments from the
08:41:53 18 attorneys, I remind you, are not evidence, and they are not
08:41:59 19 instructions on the law. They're intended only to assist
08:42:02 20 the jury in understanding the evidence and the parties'
08:42:08 21 competing contentions.

08:42:09 22 A verdict form has been prepared for you. You
08:42:13 23 will take this verdict form with you when you retire to the
08:42:17 24 jury room. And when you've reached a unanimous decision
08:42:21 25 regarding the verdict, you will have your foreperson fill

08:42:24 1 in the banks regarding the questions in the verdict form
08:42:29 2 with your unanimous answers.

08:42:31 3 Sign the verdict form and date it. At that point,
08:42:36 4 the foreperson of the jury should notify the Court Security
08:42:39 5 Officer that the jury has reached a verdict.

08:42:40 6 Answer each question in the verdict form from the
08:42:46 7 facts as you find them to be. Do not decide who you think
08:42:50 8 should win this case and then answer the questions to reach
08:42:54 9 that result.

08:42:55 10 Again, ladies and gentlemen, your answers and your
08:42:59 11 verdict must be unanimous.

08:42:59 12 In determining whether any fact has been proven in
08:43:05 13 this case, you may, unless otherwise instructed, consider
08:43:08 14 the testimony of all the witnesses, regardless of who may
08:43:12 15 have called them, and you may consider the effect of all
08:43:16 16 the exhibits received into evidence, regardless of who may
08:43:20 17 have produced or presented them.

08:43:22 18 You, the jury, are the sole judges of the
08:43:26 19 credibility and believability of each and every witness and
08:43:31 20 the weight and effect, if any, to give to the evidence
08:43:35 21 that's been presented to you in this case.

08:43:36 22 Now, I've told you previously that the attorneys
08:43:41 23 are acting as advocates for their competing parties and
08:43:45 24 those parties' competing claims, and they have a duty to
08:43:49 25 object when they believe evidence is offered during the

08:43:52 1 course of the trial that they believe should not be
08:43:55 2 admitted under the rules of the Court.

08:43:57 3 In that case, when the Court has sustained an
08:44:02 4 objection to a question addressed to a witness, you must
08:44:05 5 disregard the question entirely, and you may not draw any
08:44:10 6 inferences from its wording or speculate about how the
08:44:13 7 witness would have answered the question if I had allowed
08:44:16 8 them to answer the question.

08:44:17 9 On the other hand, if an objection has been
08:44:21 10 overruled by the Court, then you are to consider the
08:44:24 11 question and the answer just as if no objection had been
08:44:28 12 made, like any other question and answer.

08:44:30 13 Now, at various times during the course of the
08:44:34 14 trial, it's been necessary for the Court to talk to the
08:44:37 15 lawyers, either here at the bench or when you were outside
08:44:41 16 of the courtroom in the jury room.

08:44:43 17 This happens because during a trial, there are
08:44:47 18 things that you -- that occasionally arise that do not
08:44:50 19 involve the jury. You should not speculate, ladies and
08:44:54 20 gentlemen, about what was said during any of the
08:44:57 21 discussions that took place outside of your presence.

08:44:59 22 Now, there are two types of evidence that you may
08:45:04 23 consider in properly finding the truth as to the facts in
08:45:07 24 this case.

08:45:08 25 One is direct evidence, such as the testimony of

08:45:11 1 an eyewitness.

08:45:12 2 The other is indirect evidence, or sometimes
08:45:16 3 called circumstantial evidence, which is the proof of a
08:45:19 4 chain of circumstances that indicates the existence or
08:45:25 5 non-existence of certain other facts.

08:45:25 6 As a general rule, you should know that the law
08:45:29 7 makes no distinction between direct evidence and
08:45:32 8 circumstantial evidence but simply requires that you, the
08:45:37 9 jury, find the facts based on the evidence that has been
08:45:40 10 presented, both direct and circumstantial.

08:45:43 11 Now, the parties may have stipulated or agreed to
08:45:49 12 some facts in this case. And when the lawyers for both
08:45:51 13 sides stipulate as to the existence of a fact, you must,
08:45:55 14 unless otherwise instructed, accept that stipulation as
08:45:59 15 evidence and regard that fact as proven.

08:46:01 16 Certain testimony in this case has been presented
08:46:05 17 to you through depositions. A deposition is the sworn,
08:46:10 18 recorded answers to questions asked to a witness in advance
08:46:15 19 of the trial. If a witness cannot be present to testify in
08:46:19 20 person, then the witness's testimony may be presented under
08:46:23 21 oath in the form of a deposition.

08:46:24 22 As I told you earlier, before the trial, the
08:46:28 23 attorneys representing the parties in this case questioned
08:46:31 24 these deposition witnesses under oath. At that time, a
08:46:35 25 court reporter was present, and their recorded testimony

08:46:39 1 was transcribed and written down.

08:46:42 2 Both sides have had an opportunity to contribute
08:46:45 3 portions of that testimony to those deposition witnesses
08:46:49 4 that have presented -- have been presented to you as a part
08:46:52 5 of this trial in open court.

08:46:55 6 Deposition testimony is entitled to the same
08:46:58 7 consideration by you as testimony given by a witness who
08:47:06 8 appears in person and testifies live from the witness
08:47:11 9 stand.

08:47:11 10 Accordingly, you should judge the credibility and
08:47:14 11 the importance of deposition testimony to the best of your
08:47:18 12 ability just as if the witness had testified from the
08:47:20 13 witness stand in open court.

08:47:22 14 Now, while you should consider only the evidence
08:47:25 15 in this case, ladies and gentlemen, you should understand
08:47:28 16 that you are permitted to draw such reasonable inferences
08:47:32 17 from the testimony and exhibits as you feel are justified
08:47:36 18 in the light of common experience.

08:47:42 19 In other words, ladies and gentlemen, you may make
08:47:44 20 deductions and reach conclusions that reason and common
08:47:50 21 sense lead you to draw from the facts that have been
08:47:53 22 established by the testimony and evidence in this case.

08:47:55 23 However, you should not base your decisions on any
08:47:57 24 evidence not presented by the parties in open court during
08:48:03 25 the trial.

08:48:04 1 Now, unless I instruct you otherwise, you may
08:48:06 2 properly determine that the testimony of a single witness
08:48:11 3 is sufficient to prove any fact, even if a greater number
08:48:14 4 of witnesses may have testified to the contrary, if after
08:48:18 5 considering all of the evidence you believe that single
08:48:20 6 witness.

08:48:23 7 Now, when knowledge of a technical subject may be
08:48:26 8 helpful to the jury, a person who has special training and
08:48:30 9 experience in that technical field, called an expert
08:48:35 10 witness, is permitted to state his or her opinions on those
08:48:45 11 technical matters to the jury.

08:48:45 12 However, ladies and gentlemen, you're not required
08:48:46 13 to accept those opinions. As with any other witness, it is
08:48:49 14 solely up to you to decide who you believe and who you do
08:48:51 15 not believe, and whether or not you want to rely on their
08:48:59 16 testimony.

08:48:59 17 Now, over the course of the trial, certain
08:49:02 18 exhibits have been shown to you that were illustrations.
08:49:05 19 We call these demonstrative exhibits or sometimes just
08:49:08 20 demonstratives for short.

08:49:11 21 Demonstrative exhibits are a party's description,
08:49:13 22 picture, model, or drawing to describe something involved
08:49:23 23 in the trial.

08:49:23 24 If your recollection of the evidence differs from
08:49:24 25 these demonstratives, then you should rely on your

08:49:26 1 recollection.

08:49:27 2 Demonstrative exhibits are sometimes called jury
08:49:29 3 aids. And the demonstrative itself is not evidence, ladies
08:49:33 4 and gentlemen, and I cannot send demonstrative exhibits to
08:49:37 5 you in the jury room during your deliberations because it's
08:49:40 6 not evidence. But the witness's testimony given during the
08:49:47 7 use of a demonstrative is evidence.

08:49:51 8 Now, in any legal action facts must be proven by a
08:49:56 9 required amount of evidence known as the burden of proof.
08:50:00 10 The burden -- the burden of proof in this case is on the
08:50:02 11 Plaintiff, USAA, for some issues, and it's on the
08:50:05 12 Defendant, Wells Fargo, for other issues.

08:50:08 13 There are two burdens of proof that you will apply
08:50:11 14 in this case. One is the preponderance of the evidence,
08:50:16 15 and the other is clear and convincing evidence.

08:50:19 16 The Plaintiff, USAA, has the burden of proof of
08:50:23 17 proving patent infringement by a preponderance of the
08:50:27 18 evidence. USAA also has the burden of proving willful
08:50:31 19 patent infringement by a preponderance of the evidence.
08:50:35 20 And USAA has the burden of proving damages for any patent
08:50:41 21 infringement by a preponderance of the evidence.

08:50:43 22 Now, preponderance of the evidence means evidence
08:50:47 23 that persuades you that a claim is more probably true than
08:50:51 24 not true. Sometimes this is talked about as being the
08:50:55 25 greater weight and degree of credible testimony.

08:50:58 1 The Defendant in this case, Wells Fargo, has the
08:51:04 2 burden of proof of proving patent invalidity by clear and
08:51:07 3 convincing evidence.

08:51:09 4 Clear and convincing evidence means evidence that
08:51:12 5 produces in your mind an abiding conviction in the truth of
08:51:18 6 the party's fact -- let me say that again.

08:51:22 7 Clear and convincing evidence means evidence that
08:51:25 8 produces in your mind an abiding conviction that the truth
08:51:29 9 of the party's factual contentions are highly probable.

08:51:33 10 Although proof to an absolute certainty is not
08:51:37 11 required, the clear and convincing evidence standard
08:51:40 12 requires a greater degree of persuasion than is necessary
08:51:44 13 for the preponderance of the evidence standard.

08:51:47 14 If the proof establishes in your mind an abiding
08:51:51 15 conviction in the truth of the matter, then the clear and
08:51:54 16 convincing evidence standard has been met.

08:51:59 17 Now, as I've previously told you, ladies and
08:52:02 18 gentlemen, these two burdens of proof are not to be
08:52:05 19 confused with the burden of proof known as beyond a
08:52:10 20 reasonable doubt, which is the burden of proof applied in a
08:52:11 21 criminal case, not in a civil case such as this.

08:52:14 22 You should not confuse clear and convincing
08:52:18 23 evidence with beyond a reasonable doubt. It is not as high
08:52:22 24 as beyond a reasonable doubt, but it is higher than a
08:52:25 25 preponderance of the evidence.

08:52:26 1 Now, in determining whether any fact has been
08:52:31 2 proven by a preponderance of the evidence or by clear and
08:52:34 3 convincing evidence, you may, unless otherwise instructed,
08:52:39 4 consider the stipulations of the parties, the testimony of
08:52:42 5 all the witnesses, regardless of who called them, and all
08:52:45 6 the exhibits received and admitted into evidence during the
08:52:49 7 course of the trial, regardless of who may have produced
08:52:52 8 them or presented them.

08:52:53 9 Now, as I did at the beginning of the case, I'll
08:52:58 10 give you a summary of each side's contentions, and then
08:53:01 11 I'll provide you with detailed instructions on what each
08:53:04 12 side must prove to win on each of its contentions.

08:53:07 13 As I told you previously, this case concerns two
08:53:12 14 United States patents, those being U.S. Patent No.
08:53:20 15 10,013,681, and United States Patent No. 10,1 -- excuse me,
08:53:28 16 10,013,605, which have consistently been referred to
08:53:33 17 throughout the trial as the '681 patent and the '605
08:53:35 18 patent. And they have been referred to throughout the
08:53:42 19 trial at various times as the patents-in-suit. Sometimes
08:53:45 20 they've been called the asserted patents.

08:53:47 21 Now, the Plaintiff, USAA, seeks money damages from
08:53:52 22 Wells Fargo, the Defendant, for allegedly infringing the
08:53:56 23 patents-in-suit by making, using, selling, or offering for
08:54:05 24 sale in the United States the Wells Fargo Mobile Deposit
08:54:07 25 system. Sometimes in these instructions, I'll refer to

08:54:10 1 that system for shorthand as the accused product.

08:54:15 2 USAA contends that the accused product infringes
08:54:18 3 the following claims: Claim 1, Claim 3, Claim 11 through
08:54:24 4 14, and Claim 22 of the '605 patent, and Claims 12 through
08:54:32 5 14, Claim 20, Claim 22, and Claim 30 of the '681 patent.

08:54:37 6 These -- these claims are sometimes referred to
08:54:41 7 collectively as the asserted claims.

08:54:45 8 USAA has alleged that the accused product
08:54:50 9 infringes the asserted claims. USA -- USAA also alleges
08:54:57 10 that Wells Fargo's infringement is and has been willful.

08:55:01 11 USAA seeks damages in the form of a reasonable
08:55:06 12 royalty for Wells Fargo's alleged infringement.

08:55:08 13 Wells Fargo, the Defendant, denies that the
08:55:13 14 accused product infringes any of the asserted claims of the
08:55:20 15 '681 patent and the '605 patent.

08:55:22 16 Wells Fargo further denies USAA's allegation that
08:55:27 17 it willfully infringed any claim of the asserted patents.

08:55:35 18 Wells Fargo also contends that the asserted claims
08:55:37 19 are invalid, and Wells Fargo denies that it owes USAA any
08:55:41 20 damages in this case.

08:55:43 21 It's your job, members of the jury, to decide
08:55:49 22 whether USAA has proven that Wells Fargo has infringed any
08:55:53 23 of the asserted claims and whether any infringement is
08:55:57 24 willful. You must also decide whether Wells Fargo has
08:56:01 25 proven that any of the asserted claims are invalid.

08:56:04 1 If you decide that any of the asserted claims have
08:56:10 2 been infringed and are not invalid, then you will need to
08:56:17 3 decide whether any money damages should be awarded and what
08:56:20 4 amount those money damages should be to compensate USAA for
08:56:24 5 that infringement.

08:56:25 6 I'll now instruct you on a number of established
08:56:31 7 facts, and you must take these facts as true when deciding
08:56:34 8 the issues in this case.

08:56:35 9 No. 1, USAA is the record assignee and owner of
08:56:44 10 the '605 and the '681 patents;

08:56:45 11 No. 2, the asserted claims of the '605 patent are
08:56:50 12 Claims 1, 3, 11 through 14, and 22;

08:56:54 13 No. 3, the asserted claims of the '681 patent are
08:56:58 14 Claims 12 through 14, 20, 22, and 30;

08:57:03 15 No. 4, it's an established fact that the system
08:57:10 16 accused of infringement satisfies the following limitations
08:57:12 17 of the claims:

08:57:15 18 The '605 patent, Claim 1, quote, an image capture
08:57:21 19 and processing system for use with a digital camera, the
08:57:24 20 image capture and processing system comprising: A portable
08:57:29 21 device comprising a general purpose computer including a
08:57:33 22 processor coupled to a memory, the memory storing, close
08:57:38 23 quote.

08:57:38 24 Next, '605 patent, Claim 12, quote, a system for
08:57:49 25 allowing a customer to deposit a check using the customer's

08:57:51 1 own handheld mobile device with a digital camera, the
08:57:54 2 system configured to authenticate the customer, the system
08:57:58 3 including, close quote.

08:58:00 4 Next, all other instances in Claim 1 and Claim 12
08:58:06 5 of the '605 patent of the term "mobile device" or the term
08:58:11 6 "portable device."

08:58:12 7 Next, '681 patent, Claim 12, quote, a system for
08:58:18 8 allowing a customer to deposit a check using the customer's
08:58:23 9 own mobile device with a digital camera, the system
08:58:26 10 configured to ask the customer to log in using a customer
08:58:32 11 name and password, the system including, close quote.

08:58:35 12 Next, '681 patent, Claim 30, quote, a
08:58:41 13 non-transitory computer-readable medium storing an app
08:58:45 14 that, when downloaded -- downloaded and run by a customer's
08:58:49 15 mobile device, causes the customer's mobile device to
08:58:54 16 perform, close quote.

08:58:55 17 Next, all other instances in Claims 12, 20, and 30
08:59:00 18 of the '681 patent of the term "mobile device."

08:59:03 19 Now, before you can decide many of the issues in
08:59:10 20 this case, you will need to understand the role of the
08:59:12 21 patent claims.

08:59:14 22 The claims of a patent, ladies and gentlemen, are
08:59:17 23 the numbered sentences at the end of the patent. The
08:59:21 24 claims define the owner's rights under the law. The claims
08:59:27 25 are important because it's the words of the claims

08:59:29 1 themselves that define what the patent covers.

08:59:36 2 The figures and the text in the rest of the patent
08:59:38 3 are intended to provide a description or examples of the
08:59:41 4 invention and to provide a context for the claims, but it
08:59:44 5 is the claims themselves that define the breadth of the
08:59:48 6 patent's coverage.

08:59:48 7 Each claim is effectively treated as if it were
08:59:53 8 its own separate patent, and each claim may cover more or
08:59:57 9 may cover less than any other claim. Therefore, what a
09:00:02 10 patent covers collectively or as a whole depends on what
09:00:07 11 each of its claims cover.

09:00:09 12 You first need to understand what each claim
09:00:12 13 covers in order to decide whether or not there is
09:00:16 14 infringement of that claim and to decide whether or not the
09:00:19 15 claim is invalid. And the first step is to understand the
09:00:24 16 meaning of the words used in the patent claim.

09:00:28 17 Now, the law says that it's my role as the Judge
09:00:34 18 to define the terms of the claims, but it's your role as
09:00:37 19 the jury to apply my definitions to the issues that you're
09:00:40 20 asked to decide in this case.

09:00:41 21 Accordingly, and as I explained to you at the
09:00:47 22 beginning of the case, I have already determined the
09:00:49 23 meaning of certain claim language, and I've provided
09:00:52 24 definitions of those claim terms to you in your juror
09:00:56 25 notebooks.

09:00:57 1 You must accept my definitions of those words in
09:01:02 2 the claims as being correct, and it's your job to take
09:01:05 3 these definitions that I have supplied and apply them to
09:01:09 4 the issues that you are asked to decide, including the
09:01:13 5 issues of infringement and invalidity.

09:01:15 6 My interpretation of the claim terms should not be
09:01:20 7 taken by you as an indication that I have a view regarding
09:01:24 8 the issues of infringement and invalidity. The decisions
09:01:28 9 regarding infringement and invalidity are yours alone to
09:01:34 10 make.

09:01:34 11 For claim limitations where I have not construed
09:01:36 12 the language or defined or interpreted any particular term,
09:01:40 13 you are to use the plain and ordinary meaning of that term
09:01:44 14 as understood by one of ordinary skill in the art, which is
09:01:50 15 to say in the field of the technology of the patent at the
09:01:53 16 time of the alleged invention.

09:01:57 17 The meaning of the words of the patent claims must
09:01:59 18 be the same when deciding the issues of infringement and
09:02:02 19 when deciding the issues of invalidity.

09:02:06 20 I'll now explain how a claim defines what it
09:02:11 21 covers.

09:02:11 22 A claim sets forth in words a set of requirements.
09:02:15 23 Each claim sets forth its requirements in a single
09:02:19 24 sentence. If a device satisfies each of these requirements
09:02:22 25 in that sentence, then it is covered by and infringes the

09:02:27 1 claim.

09:02:28 2 There can be several claims in a patent. A claim
09:02:32 3 may be narrower or broader than any other claim by setting
09:02:35 4 forth more or fewer requirements. The coverage of a patent
09:02:40 5 is assessed on a claim-by-claim basis.

09:02:42 6 In patent law, the requirements of a claim are
09:02:48 7 often referred to as the claim elements. They're sometimes
09:02:52 8 called the claim limitations.

09:02:54 9 When a product meets all of the requirements of a
09:02:56 10 claim, where it meets all of its limitations or elements,
09:03:01 11 then the claim is said to cover that product, and the
09:03:05 12 product is said to fall within the scope of that claim. In
09:03:10 13 other words, a claim covers a product where each of the
09:03:13 14 claim elements or limitations is present in that product.

09:03:21 15 If a product is missing even one limitation or
09:03:25 16 element of a claim, the product is not covered by the
09:03:27 17 claim. And if the product is not covered by the claim, the
09:03:31 18 product does not infringe the claim.

09:03:32 19 Now, this case involves two types of patent
09:03:35 20 claims, independent claims and dependent claims.

09:03:39 21 An independent patent claim does not refer to any
09:03:42 22 other claim in the patent. An independent claim sets forth
09:03:47 23 all the requirements that must be met in order to be
09:03:50 24 covered by that claim. It's not necessary to look at any
09:03:54 25 other claim to determine what an independent claim covers.

09:03:57 1 On the other hand, a dependent claim does not by
09:04:02 2 itself recite all the requirements of a claim but refers to
09:04:08 3 another claim or claims for some of its requirements. In
09:04:11 4 this way, the dependent claim depends on another claim, or
09:04:17 5 we sometimes say refers to another claim.

09:04:22 6 The law considers a dependent claim to incorporate
09:04:26 7 all the requirements of the claim or claims to which it
09:04:30 8 refers or depends, as well as the additional claims set
09:04:33 9 forth -- the additional elements set forth in the dependent
09:04:39 10 claim itself.

09:04:40 11 To determine what a dependent claim covers, it's
09:04:42 12 necessary to look at both the dependent claim and any other
09:04:47 13 claim to which it refers or from which it depends.

09:04:52 14 A product that meets all the requirements of both
09:04:54 15 the dependent claim itself and the claim or claims to which
09:04:58 16 it refers, or as we say from which it depends, is covered
09:05:03 17 by that dependent claim.

09:05:07 18 The claims of the patents-in-suit use the word
09:05:09 19 "comprising." Comprising means including or containing.
09:05:15 20 When the word "comprising" is used, a product that includes
09:05:19 21 all the limitations or elements of the claim, as well as
09:05:24 22 additional elements or limitations, is covered by the
09:05:26 23 claim.

09:05:27 24 Some of the claims of the patents-in-suit use the
09:05:31 25 word "including." In a claim, including means comprising.

09:05:37 1 For example, if you take a claim that covers the
09:05:40 2 invention of a table, if the claim recites a table
09:05:44 3 comprising a tabletop, four legs, and glue that holds the
09:05:50 4 legs to the tabletop, that claim will cover any table that
09:05:54 5 contains those structures, even if the table also contains
09:06:00 6 other structures, such as leaves to go in the tabletop or
09:06:05 7 wheels to be added to the ends of the legs.

09:06:07 8 Now, that's a simple example using the word
09:06:10 9 "comprising" and what it means. In other words, an accused
09:06:13 10 product can have other features in addition to those
09:06:16 11 covered by the patent and still infringe a patent's claim
09:06:22 12 so long as every element or limitation of the claim is
09:06:24 13 present.

09:06:25 14 If a product is missing even one element or
09:06:31 15 limitation of a claim, it does not meet all the
09:06:33 16 requirements of the claim and is not covered by the claim.
09:06:36 17 And as I've said, if it's not covered by the claim, it does
09:06:39 18 not infringe the claim.

09:06:40 19 If a person makes, uses, sells, or offers for sale
09:06:49 20 within the United States or imports into the United States
09:06:53 21 a product that is covered by a patent claim without the
09:06:56 22 patent owner's permission, that person is said to infringe
09:07:01 23 the patent.

09:07:01 24 To determine whether there is infringement, you
09:07:05 25 must compare the asserted patent claims as I have defined

09:07:10 1 each of them to the accused product. You should not
09:07:13 2 compare the accused product with any specific example set
09:07:18 3 out in the patent or with the patent owner's own commercial
09:07:23 4 product or with the prior art in reaching your -- your
09:07:26 5 decision on infringement.

09:07:27 6 As I've reminded you during the trial, the only
09:07:32 7 correct comparison is between the accused product and the
09:07:36 8 language of the claims themselves.

09:07:39 9 You must reach your decision as to each assertion
09:07:43 10 of infringement based on my instructions about the meaning
09:07:46 11 and the scope of the claims, the legal requirements for
09:07:50 12 infringement, and the evidence presented to you by both of
09:07:56 13 the parties.

09:07:56 14 As I've already told you, to prove infringement,
09:07:59 15 USAA, the Plaintiff, must prove by a preponderance of the
09:08:03 16 evidence that the Defendant, Wells Fargo, has made, used,
09:08:07 17 sold, or offered for sale a product that meets all the
09:08:10 18 requirements of an asserted claim -- that is, USAA must
09:08:15 19 show that it is more likely than not that the accused
09:08:19 20 product meets all the requirements of an asserted claim.

09:08:21 21 If the accused product does not include any single
09:08:28 22 step or element of an asserted patent claim, then Wells
09:08:31 23 Fargo does not infringe that claim.

09:08:35 24 The issue of infringement, ladies and gentlemen,
09:08:37 25 is based on a claim-by-claim -- it's assessed on a

09:08:41 1 claim-by-claim basis within each patent. Therefore, there
09:08:45 2 may be infringement of a particular patent as to one claim,
09:08:49 3 even if there's no infringement as to the other claims in
09:08:52 4 that patent.

09:08:52 5 In order to infringe a patent claim, the accused
09:08:57 6 device must include each and every element of the claim.
09:09:01 7 In determining whether Wells Fargo infringes USAA's
09:09:06 8 asserted claims, you must determine if the accused product
09:09:10 9 contains each and every element recited in a claim of the
09:09:15 10 asserted patent.

09:09:16 11 A claim element is present if it exists in the
09:09:21 12 accused product as it is described in the claim language,
09:09:24 13 either as I have explained it to you, or if I did not
09:09:28 14 explain it, according to its -- if I did not explain it,
09:09:32 15 according to its ordinary meaning as understood by one of
09:09:36 16 ordinary skill in the art.

09:09:36 17 To establish direct infringement of a dependent
09:09:43 18 claim, the Plaintiff, USAA, must show that it is more
09:09:45 19 likely than not that the Defendant, Wells Fargo, infringed
09:09:51 20 each and every element of the independent claim to which
09:09:54 21 the dependent claim refers and the additional elements of
09:09:57 22 the dependent claim itself.

09:09:58 23 A patent can be infringed, ladies and gentlemen,
09:10:05 24 even if the alleged infringer did not have knowledge of the
09:10:10 25 patent and without the infringer knowing that what it is

09:10:13 1 doing is infringement of the claim.

09:10:14 2 A patent may also be infringed -- infringed even
09:10:17 3 though the accused infringer believes in good faith that
09:10:22 4 what it is doing is not infringement of the patent.

09:10:25 5 As I just mentioned, infringement requires a party
09:10:33 6 to make, use, sell, or offer to sell each and every
09:10:38 7 component or step of a claimed system or method. A party
09:10:42 8 makes a claimed system when it combines all of the elements
09:10:46 9 of the claims, even if it does not make each individual
09:10:50 10 component element.

09:10:52 11 A party uses a claimed system when it controls the
09:10:54 12 system and obtains benefits from it. A party obtains a
09:11:03 13 benefit from a system if it obtains a benefit from each and
09:11:04 14 every element of the claimed system.

09:11:06 15 A party does not have to exercise physical or
09:11:08 16 direct control over each element of the system in order to
09:11:15 17 use the claimed system.

09:11:16 18 Infringement requires a single party be
09:11:20 19 responsible for infringement of the claim. Where more than
09:11:24 20 one party is involved in the system accused of
09:11:27 21 infringement, you must determine whether the acts of one
09:11:30 22 party are attributable to another party such that a single
09:11:34 23 party is responsible for the infringement.

09:11:36 24 In this case, USAA contends that Wells Fargo
09:11:41 25 willfully infringed its patents. If you decide that Wells

09:11:47 1 Fargo has infringed, you must then go on to separately
09:11:51 2 address the additional issue of whether or not Wells
09:11:54 3 Fargo's infringement was willful.

09:11:56 4 USAA must prove willfulness by a preponderance of
09:12:02 5 the evidence. In other words, you must determine whether
09:12:04 6 it is more likely than not that Wells Fargo willfully
09:12:09 7 infringed the asserted patents.

09:12:10 8 You may not determine that infringement was
09:12:15 9 willful just because Wells Fargo knew of the asserted
09:12:19 10 patents and infringed them. However, you may find that
09:12:23 11 Wells Fargo willfully infringed if you find that it acted
09:12:30 12 egregiously, willfully, or wantonly. You may find Wells
09:12:35 13 Fargo's actions were egregious, willful, or wanton if it
09:12:39 14 acted in reckless or callous disregard of or with
09:12:45 15 indifference to the rights of USAA.

09:12:47 16 A Defendant is indifferent to the rights of
09:12:49 17 another when it proceeds in disregard of a high or
09:12:51 18 excessive danger of infringement that was known to it or
09:12:57 19 was apparent to a reasonable person in its position.

09:13:00 20 Your determination of willfulness should
09:13:03 21 incorporate the totality of the circumstances based on all
09:13:09 22 the evidence presented during the trial. Willfulness can
09:13:12 23 be established by circumstantial evidence.

09:13:17 24 For example, in determining whether any
09:13:19 25 infringement of an asserted claim by Wells Fargo was

09:13:22 1 willful, you may consider whether Wells Fargo intentionally
09:13:27 2 copied a product that is covered by the asserted claim.
09:13:37 3 However, such copying will be relevant to willfulness only
09:13:37 4 if it copied the product -- only if the copied product is
09:13:39 5 covered by the asserted claims.

09:13:40 6 Knowledge of the existence of a patent or patent
09:13:45 7 family can be relevant to the question of willful
09:13:48 8 infringement.

09:13:50 9 For example, if Wells Fargo knew of the existence
09:13:53 10 of a patent or subjectively believed there was a high
09:13:59 11 probability that a patent existed and took deliberate
09:14:02 12 actions to avoid learning of the patent, you may take this
09:14:06 13 into account when considering willfulness. You may also
09:14:09 14 take into account whether Wells Fargo had knowledge of a
09:14:11 15 patent family.

09:14:11 16 I'll now instruct you on the rules that you must
09:14:18 17 follow in deciding whether or not Wells Fargo has proven by
09:14:22 18 clear and convincing evidence that the asserted claims of
09:14:24 19 the patents-in-suit are invalid.

09:14:25 20 An issued patent, ladies and gentlemen, is
09:14:32 21 accorded a presumption of validity based on the presumption
09:14:36 22 that the U.S. Patent and Trademark Office office, as you've
09:14:40 23 heard referred to throughout the trial as the PTO or as the
09:14:43 24 Patent Office, acted correctly in issuing the patents.
09:14:51 25 This presumption of validity extends to all issued United

09:14:55 1 States patents.

09:14:55 2 In order to overcome that presumption, Wells Fargo
09:14:59 3 must establish by clear and convincing evidence that USAA's
09:15:01 4 patents or any claim in the patents are not valid.

09:15:07 5 The time it took the U.S. Patent and Trademark
09:15:10 6 Office office to examine and grant the patents-in-suit is
09:15:13 7 not relevant to any issue in this case. Even though the
09:15:16 8 PTO examiner has allowed the claims of a patent, you have
09:15:19 9 the ultimate responsibility of deciding whether the claims
09:15:22 10 of the patents-in-suit are valid. Like infringement,
09:15:27 11 invalidity is determined on a claim-by-claim basis.

09:15:33 12 Claims are construed in the same way for
09:15:35 13 determining infringement as for determining invalidity.
09:15:40 14 You must apply the claim language consistently and in the
09:15:44 15 same manner for issues of infringement and for issues of
09:15:47 16 invalidity. You must determine separately for each claim
09:15:51 17 whether that claim is invalid.

09:15:53 18 Now, at times, you will hear me make reference to
09:16:00 19 prior art. In patent law, a system, device, method,
09:16:04 20 publication, or patent that predated the patent claim at
09:16:09 21 issue is called prior art.

09:16:12 22 For a prior art reference to be considered for the
09:16:15 23 purpose of determining whether or not the claims are
09:16:18 24 invalid, the prior art item or reference must have been
09:16:22 25 made, known, used, filed, or published more than a year

09:16:28 1 before the effective filing date of the patent, which
09:16:34 2 you -- which you've heard referred to throughout this case
09:16:36 3 at various times at the priority date.

09:16:39 4 The parties disagree on the priority date of the
09:16:43 5 '605 and the '681 patents.

09:16:45 6 The Plaintiff, USAA, contends that the patents are
09:16:49 7 entitled to a priority date of October 31st, 2006. The
09:16:54 8 Defendant, Wells Fargo, contends that the patents are
09:16:58 9 entitled to a priority date of July the 28th, 2017.

09:17:01 10 The patents-in-suit were filed on July the 28th,
09:17:09 11 2017. Therefore, they're entitled to at least a priority
09:17:13 12 date of July 28th, 2017.

09:17:15 13 To determine whether Wells Fargo has met its
09:17:21 14 burden -- burden to show by clear and convincing evidence
09:17:24 15 that the asserted patents are not entitled to a priority
09:17:27 16 date of October 31, 2006, you will need to determine
09:17:34 17 whether the patent specification filed on October 31, 2006,
09:17:40 18 in the parent application satisfies the written description
09:17:45 19 requirement for the asserted claims filed in 2017.

09:17:52 20 If Wells Fargo does not meet this burden, the
09:17:55 21 asserted patents are entitled to a priority date of October
09:17:57 22 31, 2006.

09:18:07 23 As I've previously explained, to obtain a patent,
09:18:07 24 one must first file an application with the United States
09:18:08 25 Patent and Trademark Office. The process of obtaining a

09:18:12 1 patent is called patent prosecution.

09:18:14 2 The application submitted to the PTO includes
09:18:18 3 within it what is called a specification. The
09:18:22 4 specification is required to contain a written description
09:18:27 5 of the claimed invention telling what the invention is, how
09:18:30 6 it works, how to make it, and how to use it.

09:18:36 7 The patentee may later file an additional patent
09:18:40 8 application based on the same specification as the original
09:18:44 9 application but with different claims. These follow-on
09:18:47 10 applications are called continuations because they are a
09:18:52 11 continuation of the original patent application.

09:18:56 12 The original patent application is sometimes
09:18:59 13 called the parent application. Continuation applications
09:19:04 14 are based on the parent applications -- excuse me,
09:19:08 15 continuation applications based on the parent application
09:19:12 16 are sometimes called children.

09:19:16 17 The combination of patents issued from the patent
09:19:20 18 application and from any continuation or child applications
09:19:25 19 are referred to as a patent family. Each issued patent in
09:19:31 20 a patent family is a separate property right.

09:19:33 21 In this case, the parent application of the '681
09:19:40 22 patent was filed on October 31, 2006, and published on
09:19:45 23 January the 18th, 2011. The parent application and the
09:19:52 24 '681 patent share the same specification.

09:19:54 25 The parent application of the '605 patent was

09:19:57 1 filed on October 31, 2006. The parent application was
09:20:02 2 published on April 29th, 2014. The parent application and
09:20:08 3 the '605 patent share the same specification.

09:20:11 4 Each patent, regardless of whether it is in the
09:20:18 5 same patent family, must be assessed individually with
09:20:21 6 respect to infringement, invalidity, marking, damages, and
09:20:27 7 willfulness. You are to assess each of these issues
09:20:30 8 independently for each asserted patent according to the
09:20:33 9 instructions that I give you.

09:20:35 10 I'll now instruct you on the rules that you must
09:20:40 11 follow in determining whether the asserted patents satisfy
09:20:43 12 the written description requirement.

09:20:46 13 Wells Fargo bears the burden of establishing by
09:20:52 14 clear and convincing evidence that the claims of the '605
09:20:56 15 patent and the '681 patent do not satisfy the written
09:21:00 16 description requirement.

09:21:01 17 A patent must contain a written description of the
09:21:07 18 invention claimed in the patent. The written description
09:21:10 19 requirement helps ensure that the patent applicant actually
09:21:14 20 invented the claimed subject matter.

09:21:18 21 To satisfy the written description requirement,
09:21:20 22 the patent specification must describe each and every
09:21:24 23 limitation of a patent claim in sufficient detail, although
09:21:28 24 the exact words found in the claim need not be used.

09:21:33 25 When determining whether the specification

09:21:36 1 discloses the invention, the claim must be viewed as a
09:21:40 2 whole.

09:21:43 3 In determining whether the patent satisfies this
09:21:45 4 written description requirement, you must consider the
09:21:48 5 description from the viewpoint of a person having ordinary
09:21:51 6 skill in the field of technology of the patent when the
09:21:54 7 application was filed.

09:21:59 8 The written description requirement is satisfied
09:22:01 9 if persons of ordinary skill in the field of the invention
09:22:05 10 would recognize from reading the patent specification that
09:22:08 11 the inventor possessed the subject matter finally claimed
09:22:12 12 in the patent.

09:22:12 13 The written description requirement is satisfied
09:22:17 14 if the specification shows that the inventor possessed his
09:22:22 15 or her invention as of the priority date of the claimed
09:22:25 16 invention even though the claims themselves may have been
09:22:32 17 changed or new claims added since that time.

09:22:35 18 The written description requirement may be
09:22:44 19 satisfied by any combination of the words, structures,
09:22:48 20 figures, diagrams, formulas, et cetera, contained in the
09:22:52 21 patent application.

09:22:58 22 It is unnecessary to spell out every detail of the
09:23:01 23 invention in the specification, and specific examples are
09:23:03 24 not required. Only enough must be included in the
09:23:08 25 specification to convince persons of ordinary skill in the

09:23:15 1 art that the inventor possessed the full scope of the
09:23:17 2 invention.

09:23:18 3 The patent specification need not disclose every
09:23:24 4 embodiment of the invention. Description in the
09:23:26 5 specification of as few as one example can be a sufficient
09:23:31 6 written description of a larger category of potential
09:23:35 7 embodiments of the invention.

09:23:37 8 However, the specification must describe the
09:23:39 9 claimed invention in a way that a person of ordinary skill
09:23:46 10 in the art would understand that the larger category is
09:23:48 11 being claimed -- that is being claimed has been invented,
09:23:51 12 not just a single example.

09:23:53 13 It's unnecessary for the patent applicant to
09:23:57 14 describe concepts relating to the invention that are
09:24:01 15 already well-known to persons of ordinary skill in the art.

09:24:06 16 In considering written description, be aware that
09:24:10 17 the actual possession of the invention outside of the
09:24:14 18 specification is not enough. Rather, as stated above, or
09:24:18 19 as I've told you, it is the specification itself that must
09:24:22 20 demonstrate possession such that one skilled in the art
09:24:25 21 reading the original disclosure could reasonably discern
09:24:29 22 the limitation at issue in a claim.

09:24:31 23 I'll now instruct you on the rules that you must
09:24:40 24 follow in determining whether the asserted claims are
09:24:42 25 anticipated.

09:24:42 1 For a claim to be invalid because it is not new or
09:24:47 2 anticipated, all of its requirements must have existed in a
09:24:51 3 single system that predates the asserted claims or must
09:24:55 4 have been described in a single printed publication or
09:24:58 5 patent that predates the asserted claims.

09:25:00 6 To understand how a prior art system operates, you
09:25:06 7 may rely on multiple pieces of evidence that describe the
09:25:09 8 same prior art system for the purpose of finding
09:25:12 9 anticipation.

09:25:15 10 In other words, if you find that a single prior
09:25:17 11 art system existed that meets every requirement of the
09:25:22 12 claim, then that is enough to find the claim invalid as
09:25:25 13 anticipated by the prior art.

09:25:28 14 The prior art must contain all the limitations of
09:25:32 15 the claim, arranged as in the claim.

09:25:37 16 Defendant must prove by clear and convincing
09:25:40 17 evidence that an asserted claim was anticipated by the
09:25:43 18 prior art.

09:25:46 19 If you find that the Defendant has proven by clear
09:25:48 20 and convincing evidence that asserted -- that an asserted
09:25:51 21 claim was anticipated by the prior art, as I've explained
09:25:55 22 the law to you, you must find that the asserted claim is
09:26:01 23 invalid.

09:26:02 24 If you find that the Defendant has failed to prove
09:26:04 25 by clear and convincing evidence that an asserted claim was

09:26:08 1 anticipated by any prior art, you must find the asserted
09:26:13 2 claim is not anticipated.

09:26:16 3 In determining whether or not the invention of an
09:26:19 4 asserted claim is invalid, you must determine the scope and
09:26:23 5 content of the prior art at the time the invention was
09:26:27 6 made.

09:26:30 7 For prior art to anticipate a claim of a patent,
09:26:32 8 the disclosure in the prior art reference does not have to
09:26:35 9 be in the same words as the claim, but all of the elements
09:26:40 10 of the claim must be there, either stated or necessarily
09:26:43 11 implied, so that someone of ordinary skill in the field of
09:26:47 12 the invention looking at that reference would be able to
09:26:50 13 make and use at least one embodiment of the claimed
09:26:54 14 invention.

09:26:54 15 Anticipation can occur when the claimed invention
09:27:03 16 inherently and necessarily results from practice of what
09:27:09 17 was disclosed in the written reference, even if the
09:27:13 18 inherent disclosure was unrecognized or unappreciated by
09:27:21 19 one of ordinary skill in the field of the invention.

09:27:26 20 If you find that -- if you find that an asserted
09:27:29 21 claim is not new, as I have explained it to you, you should
09:27:32 22 find that it is invalid.

09:27:34 23 Now, ladies and gentlemen, several times in my
09:27:36 24 instructions, I have referred to a person of ordinary skill
09:27:39 25 in the field of the invention. It's up to you to decide

09:27:42 1 the level of ordinary skill in the field of the invention.

09:27:45 2 In deciding what the level of ordinary skill is,

09:27:47 3 you should consider all the evidence introduced at the

09:27:50 4 trial, including:

09:27:53 5 (1) the levels of education and experience of

09:27:57 6 inventors and other persons working in the field;

09:27:59 7 (2) the types of problems encountered in the

09:28:03 8 field;

09:28:03 9 (3) prior art solutions to those problems;

09:28:06 10 (4) the rapidity with which innovations are made;

09:28:15 11 And, (5), the sophistication of the technology.

09:28:18 12 A person of ordinary skill in the art is a

09:28:22 13 hypothetical person who is presumed to be aware of all the

09:28:26 14 relevant prior art at the time of the claimed invention.

09:28:29 15 If you find that USAA has proven that Wells Fargo

09:28:35 16 has infringed any of the asserted claims and if you find

09:28:41 17 that Wells Fargo has failed to show that the asserted

09:28:43 18 claims are invalid, you must then consider the proper

09:28:47 19 amount of damages, if any, to award to USAA.

09:28:51 20 I will now instruct you about the measure of

09:28:59 21 damages. However, by instructing you on damages, I'm not

09:29:02 22 suggesting which party should win this case on any issue.

09:29:05 23 If you find that Wells Fargo has not infringed any

09:29:07 24 of the asserted claims or that the infringed claims are

09:29:11 25 invalid, then USAA is not entitled to any damages.

09:29:15 1 If you award damages, ladies and gentlemen, they
09:29:19 2 must be adequate to compensate USAA for any infringement of
09:29:24 3 the asserted claims you may find.

09:29:25 4 You must not award USAA damages -- I'm sorry, you
09:29:37 5 must not award USAA more -- USAA more damages than are
09:29:41 6 adequate to compensate for the infringement, nor should you
09:29:45 7 include any additional amount for the purpose of --
09:29:48 8 purposes of punishing Wells Fargo.

09:29:52 9 The patent law specifically provide that damages
09:29:55 10 for infringement may not be less than a reasonable royalty.

09:30:00 11 Now, USAA has the burden to establish the amount
09:30:03 12 of its damages by a preponderance of the evidence. In
09:30:07 13 other words, you should award only those damages that USAA
09:30:11 14 establishes that it more likely than not suffered as a
09:30:16 15 result of Wells Fargo's infringement of the asserted
09:30:19 16 claims.

09:30:22 17 While USAA is not required to prove the amount of
09:30:26 18 its damages with mathematical precision, it must prove them
09:30:30 19 with reasonable certainty. USAA is not entitled to damages
09:30:35 20 that are remote or speculative.

09:30:37 21 A reasonable royalty is the amount of royalty
09:30:42 22 payment that a patentholder and the alleged infringer would
09:30:46 23 have agreed to in a hypothetical negotiation taking place
09:30:50 24 at a time immediately prior to when the infringement first
09:30:53 25 began.

09:30:54 1 In considering this hypothetical negotiation, you
09:30:57 2 should focus on what the expectations of the patentholder
09:31:05 3 and the alleged infringer would have been had they entered
09:31:08 4 into an agreement at that time and had they acted
09:31:10 5 reasonably in their negotiations.

09:31:12 6 In determining this, you must assume that both
09:31:16 7 parties believe the asserted patents were valid and
09:31:21 8 infringed and that both parties were willing to enter into
09:31:25 9 an agreement.

09:31:26 10 The reasonable royalty you determine must be a
09:31:28 11 royalty that would have resulted from the hypothetical
09:31:32 12 negotiation and not simply a royalty that either party
09:31:35 13 would have preferred.

09:31:36 14 The law requires that any damages awarded to USAA
09:31:40 15 correspond to the value of the alleged inventions within
09:31:44 16 the accused product, as distinct from other unpatented
09:31:50 17 features of the accused product or other factors, such as
09:31:54 18 advertising or marketing, or Wells Fargo's size or
09:31:58 19 market -- market position.

09:32:01 20 This is particularly true where the accused
09:32:04 21 product has multiple features and multiple components not
09:32:08 22 covered by the patent or where the accused product works in
09:32:14 23 conjunction with other non-patented items.

09:32:17 24 Therefore, ladies and gentlemen, the amount you
09:32:18 25 find as damages must be on the value attributable to the

09:32:23 1 patented technology alone.

09:32:24 2 Now, in determining a reasonable royalty, you
09:32:27 3 should consider all the facts known and available to the
09:32:30 4 parties at the time infringement began. You may also
09:32:35 5 consider the following:

09:32:36 6 (1) the royalties received by the patentee for
09:32:40 7 licensing of the patent-in-suit, proving or tending to
09:32:43 8 prove an established royalty;

09:32:44 9 (2) the rates paid by the licensee for the use of
09:32:49 10 other patents comparable to the patent-in-suit;

09:32:52 11 (3) the nature and scope of the license, as
09:32:56 12 exclusive or non-exclusive, or as restricted or
09:32:59 13 non-restricted in terms of territory, or with respect to
09:33:03 14 whom the manufactured product may be sold;

09:33:05 15 (4) the licensor's established policy and
09:33:10 16 marketing program to maintain its patent monopoly by not
09:33:15 17 licensing others to use the invention or by granting
09:33:18 18 licenses under special conditions designed to preserve that
09:33:23 19 monopoly;

09:33:23 20 (5) the commercial relationship between the
09:33:26 21 licensor and licensee, such as whether they are competitors
09:33:30 22 in the same territory in the same lines of business or
09:33:35 23 whether they are inventor and promoter;

09:33:37 24 (6) the effect of selling the patented specialty
09:33:41 25 in promoting sales of other products of the licensee, that

09:33:46 1 existing value of the invention or the licensor as a
09:33:51 2 generator of sales of its non-patented items and the extent
09:33:54 3 of such derivative or convoyed sales;
09:33:57 4 (7) the duration of the patent and the term of the
09:34:01 5 license;
09:34:02 6 (8) the established profitability of a product
09:34:09 7 made under the patent, its commercial success, and its
09:34:12 8 current popularity;
09:34:13 9 (9) the utility and advantages of the patent
09:34:17 10 property over the old modes or devices, if any, that had
09:34:23 11 been used for working out similar results.
09:34:25 12 (10) the nature of the patented invention, the
09:34:28 13 character of the commercial embodiment of it as owned and
09:34:32 14 produced by the licensor, and the benefits to those who
09:34:35 15 have used the invention;
09:34:36 16 (11) the extent to which the infringer has made
09:34:40 17 use of the invention and any evidence probative of the
09:34:43 18 value of that use;
09:34:44 19 (12) the portion of the profit or of the selling
09:34:50 20 price that may be customary in the particular business or
09:34:53 21 in comparable businesses to allow for the use of the
09:34:56 22 invention or analogous inventions;
09:34:58 23 (13) the portion of the realizable profit that
09:35:03 24 should be credited to the invention as distinguished from
09:35:06 25 non-patented elements, the manufacturing process, business

09:35:10 1 risks, or significant features or improvements added by the
09:35:16 2 infringer;
09:35:17 3 (14) the opinion testimony of qualified experts;
09:35:20 4 (15) the amount that a licensor, such as USAA, and
09:35:27 5 a licensee, such as Wells Fargo, would have agreed upon at
09:35:32 6 the time the infringement began if both had been reasonably
09:35:35 7 and voluntarily trying to reach an agreement -- that is,
09:35:39 8 the amount which a prudent licensee, who desired as a
09:35:44 9 business proposition to obtain a license to manufacture and
09:35:50 10 sell a particular article embodying the patented invention,
09:35:53 11 would have been willing to pay as a royalty and yet be able
09:35:56 12 to make a reasonable profit and which amount would have
09:35:59 13 been acceptable by a prudent patentee who was willing to
09:36:03 14 grant a license.

09:36:04 15 No one of these factors is dispositive, ladies and
09:36:09 16 gentlemen, and you can and should consider all the evidence
09:36:12 17 that's been presented to you in this case on each of these
09:36:15 18 factors.

09:36:18 19 You may also consider other factors which in your
09:36:21 20 minds would have increased or decreased the royalty
09:36:25 21 Wells Fargo would have been willing to pay and the patent
09:36:29 22 owner, USAA, would have been willing to accept, both acting
09:36:32 23 as normally prudent business people.

09:36:34 24 In determining a reasonable royalty, you may also
09:36:40 25 consider evidence concerning the availability or lack

09:36:43 1 thereof of non-infringing alternatives to the patented
09:36:47 2 invention.

09:36:48 3 You may compare the patented invention to
09:36:51 4 non-infringing alternatives to determine the value of the
09:36:54 5 patented invention, including the utility and advantages of
09:37:00 6 the patent over the old modes or devices, if any, that had
09:37:04 7 been used to achieve similar results.

09:37:06 8 As I've already told you, you must not award
09:37:11 9 USAA -- USAA any additional amount for the purpose of --
09:37:15 10 purposes of punishing Wells Fargo or setting an example.

09:37:19 11 Additionally, you must not consider USAA's
09:37:22 12 allegations of willfulness in considering damages.

09:37:27 13 Consideration of willfulness is entirely separate from the
09:37:30 14 question of damages. You may not increase damages because
09:37:35 15 you find willfulness or decrease damages because you did
09:37:38 16 not find willfulness.

09:37:40 17 I will take your decision regarding the issue of
09:37:43 18 willfulness into account later.

09:37:45 19 Now, with these instructions, ladies and
09:37:48 20 gentlemen, we will now at this time proceed to hear closing
09:37:52 21 arguments from the attorneys for the parties.

09:37:55 22 Plaintiff, you may now present your first closing
09:37:58 23 argument.

09:37:59 24 MR. BUNT: Thank you, Your Honor.

09:38:00 25 May it please the Court.

09:38:08 1 THE COURT: You may proceed.

09:38:09 2 MR. BUNT: Good morning, ladies and gentlemen.

09:38:14 3 I want to begin by thanking you for your service

09:38:18 4 today. I know that many of you have driven from different

09:38:22 5 towns every day here. I know that your time here has taken

09:38:26 6 you away from your family and from your jobs.

09:38:30 7 I know that both sides have presented a lot of

09:38:34 8 information to you in a very rapid fashion, and it may have

09:38:38 9 felt like you were at times drinking from a fire hose.

09:38:42 10 And on behalf of USAA and the entire legal team, I

09:38:44 11 would just like to say thank you for your time and for your

09:38:47 12 attention.

09:38:47 13 Now, Wells Fargo said something in their opening

09:38:51 14 statement that resonated with me.

09:38:55 15 Ms. Williams said that this case is about respect,

09:38:59 16 and I think that makes a lot of sense. And, in fact, I

09:39:02 17 wrote down what she said. She said: I want to talk with

09:39:05 18 you about respect for property rights, respect for the

09:39:08 19 process, and respect for the value of those specific

09:39:13 20 property rights.

09:39:15 21 Judge Gilstrap just gave you instructions, and one

09:39:17 22 of those instructions that you heard is that you are the

09:39:20 23 sole judges of the credibility and believability of the

09:39:24 24 witnesses and the evidence. And I want to ask that you

09:39:28 25 consider the credibility of the evidence, especially in

09:39:32 1 light of the issue of respect.

09:39:35 2 I want to talk first about respect for USAA's
09:39:42 3 property.

09:39:43 4 USAA began the research on remote deposit capture
09:39:49 5 back in 2004, and USAA launched Deposit@Home product in
09:39:56 6 2006. You'll recall that that's the product that allowed
09:39:59 7 members to use everyday scanners and digital cameras to
09:40:02 8 deposit their checks remotely.

09:40:05 9 And USAA filed its patent applications in 2006 for
09:40:11 10 the parents of the '605 and '681. And USAA released its
09:40:18 11 MRDC phone app in 2009, the first bank to do that.

09:40:23 12 And in 2011, the parent application for the '605
09:40:28 13 and the '681, those patent applications began to be
09:40:30 14 published.

09:40:31 15 Then we look to 2012. Three years after USAA came
09:40:37 16 out with its first product is when Wells Fargo finally
09:40:40 17 launched its MRDC app.

09:40:43 18 Now, what did you hear in opening statements,
09:40:46 19 though, about this? You heard them say that the patent was
09:40:49 20 invalid. Look at the testimony at the bottom of this slide
09:40:52 21 from Mr. -- Mr. Saffici, who said: You can't -- he was
09:40:56 22 asked: You can't identify any system, any design anywhere
09:41:00 23 in the world that anticipates or renders obvious the '605
09:41:05 24 or '681 patent, correct?

09:41:06 25 And he said: That was my testimony then and now.

09:41:10 1 Nobody else was before USAA. Ask yourself what
09:41:18 2 does Wells Fargo's contention about invalidity say to you
09:41:23 3 about their respect for USAA's property rights?
09:41:26 4 You also heard in the opening statement that the
09:41:33 5 Patent Office gave no express indication that they had
09:41:37 6 looked at the 2006 specifications to confirm whether mobile
09:41:41 7 phones were described during that one-year process.
09:41:44 8 But what did you hear in evidence?
09:41:46 9 Mr. Saffici was asked: You understand that Patent
09:41:50 10 Office examiners are required to read the specification to
09:41:52 11 determine if there is support in a specification for the
09:41:56 12 claims as a part of the examination process?
09:42:00 13 And he said: Yes, I would agree.
09:42:02 14 He was also asked: The Patent Office in the '605
09:42:06 15 process -- prosecution record considered the question of
09:42:09 16 priority, correct?
09:42:10 17 His answer was: Yes.
09:42:12 18 The examiner looked at the patent and agreed that
09:42:16 19 it was entitled to a priority date of 2006 because it was
09:42:22 20 supported by that specification.
09:42:24 21 What else did we hear?
09:42:26 22 Well, you heard in the opening statement that the
09:42:31 23 2018 patents for the first time talk about using a mobile
09:42:35 24 device with a digital camera for check deposit. That's
09:42:38 25 what Wells Fargo told you.

09:42:39 1 Evidence you heard, though, was that Mr. Saffici
09:42:45 2 was asked: The specifications of the patents in this case
09:42:49 3 disclose the use of mobile devices with digital cameras,
09:42:53 4 correct?

09:42:53 5 And he said: That is what I testified to.

09:42:56 6 That was disclosed in 2006 by the original
09:43:00 7 specification, the exact opposite of Wells Fargo's opening
09:43:03 8 statement.

09:43:04 9 Now, there was some suggestion that -- that
09:43:11 10 Mr. Saffici was somehow confused about this issue or that
09:43:14 11 he didn't know exactly what had been said in the
09:43:17 12 deposition. Mr. Saffici gave two days' worth of
09:43:21 13 depositions. Both sides were there. Both sides were
09:43:24 14 allowed to question him. Both sides were allowed to
09:43:27 15 redirect questions just like you've heard here in the
09:43:29 16 Court. Mr. Saffici had a chance to look at that deposition
09:43:32 17 after it was taken back at his office and to see if any
09:43:36 18 mistakes were made.

09:43:38 19 Wells Fargo just doesn't like this testimony. But
09:43:40 20 that is the testimony that was given.

09:43:42 21 You also heard from Mr. Brady who told you that
09:43:47 22 the patent rules changed back in 2016, and he said: USAA
09:43:53 23 went back and refiled its patents to make sure it complied
09:43:57 24 with the new standards.

09:43:58 25 What does that tell you about who has respect for

09:44:01 1 the patent process?

09:44:02 2 I expect Wells Fargo may say to you throughout
09:44:07 3 this process that we should have brought Mr. Calman here to
09:44:12 4 testify. I want you to remember that Wells Fargo is the
09:44:15 5 party who has the burden of proof on invalidity. And it's
09:44:20 6 a clear and convincing standard of proof.

09:44:21 7 You heard testimony that Mr. Calman had prepared
09:44:26 8 an expert report and that he and Dr. Conte worked together
09:44:30 9 on those -- on preparing those reports. And Dr. -- or
09:44:36 10 Mr. Calman described the specification to Dr. Conte.

09:44:39 11 And you'll recall Dr. Conte discussing the Palm
09:44:44 12 Treo that existed back in 2006. And you'll recall that
09:44:48 13 Mr. Calman had told him that by 2006, the Windows operating
09:44:52 14 system included Windows mobile phone operating system for
09:45:00 15 use with mobile phones.

09:45:02 16 Dr. Conte testified that he agreed with
09:45:05 17 Mr. Calman. There was no reason to bring additional
09:45:06 18 witnesses when all the evidence was already here.

09:45:11 19 You just heard from the Court that a single
09:45:14 20 witness -- a single witness is sufficient to prove -- you
09:45:17 21 don't have to bring multiple witnesses. That would have
09:45:20 22 been a waste of time for the Court and for you.

09:45:23 23 THE COURT: Seven minutes have been used.

09:45:25 24 MR. BUNT: Thank you, Your Honor.

09:45:27 25 If Wells Fargo thought that Mr. Calman would have

09:45:29 1 said something different here at trial, then they could
09:45:32 2 easily have called him to testify at trial themselves.

09:45:36 3 One more comment about Mr. Saffici. Mr. Saffici
09:45:39 4 was not hired -- well, let me say this: Wells Fargo hired
09:45:44 5 as an invalidity expert a person who did not have technical
09:45:54 6 expertise. He had no role in actually designing a mobile
09:45:55 7 capture system. And it was not fair to put Mr. Saffici in
09:45:57 8 that role.

09:45:59 9 And it's even more unfair when you consider what
09:46:01 10 his expertise is in. He's highly experienced in business.
09:46:06 11 He has 53 years of banking experience, and he could have
09:46:11 12 easily talked about the value of MRDC and what the value of
09:46:17 13 that technology is in the marketplace. But Wells Fargo did
09:46:19 14 not call him for that.

09:46:20 15 Ladies and gentlemen, this case is about
09:46:25 16 infringement, validity, and damages. And despite what the
09:46:28 17 documents say and what their own witnesses said at the
09:46:31 18 deposition, they have trotted out a litany of excuses at
09:46:35 19 this trial.

09:46:37 20 Think about what they are saying. It is basically
09:46:40 21 like if somebody stole your lawn mower and you accuse them
09:46:44 22 of it, and they said, oh, no, I didn't take that, but even
09:46:47 23 if I did, it was broken at the time, and even if it wasn't
09:46:52 24 broken, it really wasn't worth that much to me.

09:46:57 25 That doesn't make any sense. All of this

09:47:00 1 indicates Wells Fargo's lack of respect for property
09:47:03 2 rights, their lack of respect for the process, their lack
09:47:07 3 of respect for the value of property rights.

09:47:10 4 I respectfully request that you consider these
09:47:10 5 facts when you retire to the jury room to deliberate.

09:47:18 6 Thank you so much for your time and your
09:47:21 7 attention.

09:47:21 8 MR. SHEASBY: Good morning, ladies and gentlemen
09:47:26 9 of the jury. I would also like to thank you for your time
09:47:30 10 this last week.

09:47:31 11 I want to start out by talking about the story
09:47:38 12 that led to where we are today, and it's a story that
09:47:41 13 begins with Chuck Oakes, the head of the Applied Research
09:47:45 14 Division at USAA, who is now retired -- he has over a
09:47:49 15 hundred patents to his name -- who believes that the system
09:47:52 16 that USAA created would transform the banking industry.

09:47:55 17 And we see from Wells Fargo's own internal records
09:47:59 18 that he was right, that the MRDC system that USAA created
09:48:03 19 was recognized as table stakes, as absolutely essential to
09:48:08 20 the industry.

09:48:09 21 And what's powerful about USAA's system is its
09:48:15 22 durability. A system was created in 2006, that as
09:48:22 23 Mr. Brady testified, to this day can host and support any
09:48:27 24 digital device that has a camera and a general purpose
09:48:31 25 processor. USAA can meet its members wherever they are

09:48:34 1 over the years.

09:48:35 2 And you think about, by building that foundation,
09:48:38 3 it answers the question: Why did the United States Patent
09:48:42 4 Office give us a foundational patent on MRDC? Because of
09:48:47 5 the powerful foundation the applied engineering division at
09:48:50 6 USAA had created.

09:48:50 7 Four questions. The first one is infringement.

09:48:57 8 No intent required. No acts -- it doesn't matter if it was
09:49:00 9 an accident. It doesn't matter if you did it on purpose.
09:49:03 10 It's strict liability.

09:49:04 11 The burden is ours. The burden is preponderance
09:49:07 12 of the evidence. If one pebble tips in favor of USAA on
09:49:12 13 infringement, as a matter of law, USAA must prevail.

09:49:17 14 Professor Conte spent time and walked you through
09:49:21 15 each limitation of each claim of the patent. He reviewed
09:49:25 16 source code with you. He looked and mapped every single
09:49:29 17 limitation.

09:49:30 18 Now, what is remarkable about that is that when
09:49:34 19 Wells Fargo's expert took the stand -- there are two
09:49:38 20 patents in the case. There's the '605 patent. And Wells
09:49:44 21 Fargo's own expert admitted that he has no technical
09:49:48 22 defense whatsoever to the infringement of the '605, none at
09:49:53 23 all. Nothing.

09:49:55 24 As to the '681 patent, he said, oh, well, the
09:50:00 25 mobile device has to perform the OCR and optical character

09:50:03 1 recognition. But if you remember, he showed you a claim
09:50:08 2 that expressly says that the system performs the OCR
09:50:11 3 system. But he didn't highlight the word "system." He
09:50:17 4 didn't highlight the word "system."

09:50:18 5 And when I cross-examined him, he admitted that
09:50:21 6 the system includes both the back end and front end
09:50:24 7 processors.

09:50:25 8 Now, what Wells Fargo did say is they say, oh,
09:50:29 9 it's not our fault. We don't make the system. That's our
09:50:33 10 customer's problem.

09:50:35 11 But when I asked Dr. Villasenor on
09:50:39 12 cross-examination, he admitted that when he told you all
09:50:44 13 the claims were system claims, that was not true. There's
09:50:49 14 a claim to a mobile application.

09:50:50 15 So even if you accepted his argument, the argument
09:50:54 16 would fail because here we have a claim to the application,
09:50:58 17 which Dr. Villasenor admits Wells Fargo's made -- makes.

09:51:02 18 Now I want to turn to willful infringement.
09:51:06 19 Willful infringement is about intent. And there's a couple
09:51:10 20 of interesting categories of evidence that have been
09:51:15 21 created -- that have been discovered during this case.

09:51:18 22 The first is that Wells Fargo has known about our
09:51:19 23 patent application since 2010. They knew about the MRDC
09:51:23 24 patent applications since 2010. Their corporate
09:51:30 25 representative -- representative had to admit it. If --

09:51:32 1 remember, he first denied it. And then Ms. Glasser had to
09:51:36 2 show him his testimony under oath. And at that point, he
09:51:39 3 was forced to admit it.

09:51:42 4 And what's more, the folks who actually designed
09:51:47 5 Wells Fargo's MRDC system, like Mr. Ajami, admitted that
09:51:52 6 they were copying USAA's system.

09:51:54 7 Now, here's an important point. If we hadn't
09:51:59 8 created something foundational, if our patent was invalid,
09:52:04 9 if we're just -- have worthless technology, why were they
09:52:10 10 looking at our applications in 2010, four years after they
09:52:13 11 were filed? Why were they leveraging our design to create
09:52:17 12 our design?

09:52:18 13 The idea that our patents are invalid, the idea
09:52:21 14 that our patents don't cover MRDC, the idea that our
09:52:24 15 patents aren't foundational, has no connection to common
09:52:31 16 sense.

09:52:33 17 And as the Judge told you, one of the most
09:52:36 18 powerful tools you have is common sense. Why would a bank
09:52:39 19 that has more branches and more tellers than any other bank
09:52:42 20 in the United States be looking at our patent applications
09:52:45 21 and be, quote, leveraging our design if we hadn't created
09:52:49 22 something foundational?

09:52:51 23 The third question: Are USAA's patents valid?

09:52:58 24 Validity is a completely different standard.

09:53:05 25 Validity requires clear and convincing evidence, and the

09:53:10 1 reason it requires clear and convincing evidence is because
09:53:14 2 the patents were carefully examined by independent third
09:53:19 3 parties, the Patent Office.

09:53:20 4 And so whereas the preponderance of the evidence
09:53:24 5 standard requires just one pebble to weigh in favor of
09:53:30 6 USAA, the clear and convincing standard requires much
09:53:34 7 greater weight of evidence for Wells Fargo.

09:53:37 8 And you'll see it in the Judge's instructions. On
09:53:43 9 Page 14 of the Judge's instructions, the presumption of
09:53:45 10 validity exists.

09:53:47 11 The instructions also make clear that it is Wells
09:53:51 12 Fargo's sole burden to prove by clear and convincing
09:53:53 13 evidence that the patent is invalid. Their sole burden.

09:54:00 14 The instructions also make clear that as few as
09:54:05 15 one example can be sufficient for written description of a
09:54:08 16 larger category.

09:54:09 17 When you create a foundational invention, you
09:54:12 18 can't just take a new type of digital device that comes out
09:54:15 19 next year and say, oh, well, then we don't have to do
09:54:19 20 anything to take responsibility for our actions because now
09:54:22 21 we purchased the new iPhone. But that doesn't make sense
09:54:26 22 when you have a foundational invention.

09:54:28 23 The United States Patent Office considered the
09:54:35 24 exact question presented to the jury. Are the claims
09:54:41 25 described in the specification? And Mr. Saffici was --

09:54:45 1 admitted under oath that the prosecution record makes clear
09:54:49 2 that the question of priority was considered by the
09:54:52 3 examiner in the '605 patent, and he admitted that the
09:54:55 4 question of priority was considered in the '681 patent, and
09:55:00 5 the patents were granted.

09:55:01 6 Now, the record, I believe, showed at trial that
09:55:07 7 the patent examiners got it right. The claims have no
09:55:13 8 connection to how a digital camera and a general purpose
09:55:16 9 computer are connected. It's irrelevant how they're
09:55:20 10 connected because the power of the claims is the use of a
09:55:22 11 software application that could control those systems to
09:55:27 12 create something powerful.

09:55:30 13 The inside of a patent is the software, and you
09:55:33 14 heard Mr. Brady talk about that in his testimony. A
09:55:38 15 digital camera, a portable device to control the digital
09:55:42 16 camera with software.

09:55:42 17 Professor Conte spoke about the fact the patent
09:55:51 18 doesn't care about how many boxes you put the devices in.
09:55:54 19 What the patent cares about is the software.

09:55:57 20 And if you remember, he talked about cracking open
09:56:00 21 his iPhone, and if he cracked open his iPhone, he'd see in
09:56:03 22 that iPhone a camera connected to a general purpose
09:56:09 23 processor.

09:56:11 24 That's what's in an iPhone. That's what's in a
09:56:15 25 tablet. That's what's in every digital device with a

09:56:19 1 camera and that can run an app today.

09:56:21 2 Mr. Saffici was asked bluntly, the claims of the
09:56:28 3 patents just require the presence of a digital camera in a
09:56:31 4 portable or mobile device. Integrated versus
09:56:35 5 non-integrated, two boxes versus three boxes versus four
09:56:38 6 boxes. It's irrelevant to the patent claims, and it's
09:56:41 7 irrelevant to the patent because USAA created the
09:56:46 8 foundation, because it takes its members where they were.

09:56:50 9 And what did Mr. Saffici say, under oath: You
09:56:53 10 said that the specification teaches that the handheld
09:56:55 11 device may include a digital camera?

09:56:56 12 I did say that.

09:56:58 13 He didn't just say it in his deposition. He
09:57:02 14 didn't just say it at trial. He said it in his actual
09:57:06 15 expert report.

09:57:10 16 They claim that this patent doesn't disclose a
09:57:13 17 handheld device that may include a digital camera. That is
09:57:15 18 the essence of what they spent the last four days trying to
09:57:20 19 convince you of.

09:57:21 20 And Mr. Saffici in his report and under oath in
09:57:23 21 front of you said the exact opposite. That is the
09:57:29 22 testimony in the record. Mr. Saffici wasn't confused.
09:57:33 23 Mr. Saffici told the truth when he was faced with the facts
09:57:38 24 of what was in front of him.

09:57:40 25 Mr. Saffici admitted, without qualification, that

09:57:46 1 every single limitation, mobile device, digital camera,
09:57:50 2 communication together is described in that common 2006
09:57:54 3 specification. Mr. Saffici wasn't confused. This is what
09:57:59 4 he admitted to under oath.

09:58:02 5 Mr. Saffici was actually shown lines of the
09:58:06 6 patent. He was shown the passages from both the '605 and
09:58:14 7 '681 patent that talk about communicatively coupling.

09:58:15 8 THE COURT: 20 minutes have been used.

09:58:17 9 MR. SHEASBY: And what he said -- what he said was
09:58:23 10 that, I don't see any limitation in the specification, any
09:58:30 11 limitation whatsoever as to how that communicatively
09:58:34 12 coupling occurs. It can be in separate boxes. It can be
09:58:38 13 in one box. It was irrelevant to Mr. Saffici.

09:58:41 14 There is a place in this world for great
09:58:56 15 innovations. The Applied Research Division at USAA was one
09:59:04 16 of those places. The members' money that was used to
09:59:12 17 create these -- these -- these innovations deserves to be
09:59:16 18 respected.

09:59:18 19 And one of the most important aspects of respect
09:59:21 20 is respect of the labor of our members and the hard-earned
09:59:27 21 funds of our members that created these innovations.

09:59:32 22 The last question you're asked to be -- decide is
09:59:40 23 damages, and Mr. Weinstein has concluded that damages of no
09:59:44 24 less than 85 cents per successful deposit should be
09:59:48 25 awarded. And that's \$102 million during the damages

09:59:53 1 period.

09:59:54 2 And one of the things that's most striking about
09:59:58 3 the examination of Mr. Gerardi yesterday, at the end of the
10:00:02 4 day, was he gave you a number, \$3.9 million. He didn't
10:00:07 5 even bother to tell you what that was on a per unit basis,
10:00:11 6 and the reason for that is because it's pennies.

10:00:14 7 Wells Fargo charges USAA members \$3.50 every time
10:00:19 8 we go to their ATMs, and we pay it. And we pay it because
10:00:22 9 they invested their money in it, and they have a right to
10:00:26 10 that return.

10:00:27 11 Wells Fargo, through EWS, charges us 60 cents
10:00:32 12 every time we use their -- their Zelle system. And USAA
10:00:35 13 pays it. And we pay it because what they invested in.

10:00:40 14 And yet when we come to them and ask them to pay
10:00:44 15 fair value for a technology that their internal records
10:00:48 16 admit is table stakes, for a technology that their internal
10:00:51 17 records show they copied from us, they tell us, you get
10:00:55 18 three cents.

10:00:58 19 Ladies and gentlemen of the jury, I will have one
10:01:00 20 more opportunity to speak with you. Thank you for your
10:01:02 21 time.

10:01:04 22 THE COURT: Defendant may now present its closing
10:01:11 23 argument.

10:01:14 24 MR. MELSHEIMER: May I have a moment, Your Honor?

10:01:20 25 THE COURT: Proceed when you're ready.

10:01:22 1 MR. MELSHEIMER: May it please the Court.

10:01:32 2 Good morning. We promised you respect. I hope

10:01:39 3 you think we've delivered it over the last few days. We

10:01:44 4 respect you, we respect your time, and we appreciate the

10:01:48 5 sacrifice it has been for you to come to court every day

10:01:53 6 and listen to the testimony and see the evidence.

10:01:55 7 You are vitally important to this process because

10:02:00 8 without you -- without you leaving your homes every day and

10:02:03 9 leaving your jobs, someone can come into court and claim

10:02:08 10 that a patent they filed in 2017 was actually invented in

10:02:14 11 2006. Someone can come to court and claim that a patent is

10:02:19 12 being infringed even when not all the elements are

10:02:25 13 satisfied.

10:02:26 14 Without you, someone can come to court and claim

10:02:30 15 credit and seek money for things they did not invent. And

10:02:35 16 that is why you are so important. That is why your role is

10:02:39 17 so important, and that is why we have so much respect for

10:02:42 18 you.

10:02:42 19 At the beginning of the trial, you heard that when

10:02:46 20 you're accused of patent infringement, you only have two

10:02:48 21 choices, vacate or seek permission.

10:02:52 22 Well, you now know that's not true, because it's

10:02:57 23 appropriate and proper for someone to come into court who's

10:03:01 24 been accused of things that are wrong or exaggerated or

10:03:06 25 overstated, to challenge the patent in court, to deny

10:03:08 1 infringement, to claim the patent's invalid and prove it,
10:03:13 2 and also to say, you know what, the valuation you've put on
10:03:16 3 your innovation, if you have one, is far exaggerated and
10:03:19 4 far in excess of reality.

10:03:21 5 That's what you're here to help us with.

10:03:26 6 With all that in mind, Ms. Williams and I decided
10:03:31 7 to divide our time this way: I'm going to go through with
10:03:35 8 you the evidence -- some of the evidence in the next 20
10:03:37 9 minutes or so. And she's going to show you how that
10:03:40 10 evidence links up with the instructions that the Court just
10:03:45 11 gave you about how this case should be decided. And I hope
10:03:48 12 that you will find that approach helpful.

10:03:51 13 The first witness in the case was Mr. Chuck Oakes.
10:03:55 14 Now, he was an inventor of the case. And he invented
10:03:58 15 something -- he admitted something important, that USAA did
10:04:00 16 not invent check imaging.

10:04:03 17 He also admitted that back in 2006 their focus
10:04:10 18 wasn't on what they're claiming now. Their focus was on
10:04:13 19 using a scanner, a separate scanner used to get checks or
10:04:17 20 documents into the system.

10:04:17 21 Before October 2006 when this patent claim claims
10:04:25 22 to have been invented, USAA had not done any work on the
10:04:28 23 processing and image of a check taken with a mobile phone,
10:04:33 24 correct?

10:04:33 25 The only thing they had done was with a webcam

10:04:36 1 which is a separate device that's attached to the computer.

10:04:38 2 They brought you Mr. Brady, their corporate
10:04:42 3 representative. Not an inventor on these patents, not
10:04:44 4 someone that contributed to the technology that they say
10:04:47 5 they're so proud of. But he did admit some important
10:04:50 6 things.

10:04:51 7 He admitted that USAA should not recover value or
10:04:54 8 money for things they didn't invent. If they didn't invent
10:04:57 9 something, they shouldn't ask other people to pay for it.

10:05:01 10 He also admitted that USAA did not start
10:05:04 11 experimenting with digital phones or camera phones until
10:05:10 12 2007. If their specification had described that fully to
10:05:13 13 support their invention, which they claim to have invented,
10:05:17 14 that wouldn't have been true.

10:05:18 15 The next witness you heard from was Dr. Conte.
10:05:24 16 Remember, the only step that we're focused on for
10:05:29 17 infringement -- because, remember, the Judge just told you,
10:05:32 18 if one's missing, there's no infringement. These patents
10:05:35 19 claim multiple steps. If there's one missing, there's no
10:05:39 20 infringement.

10:05:39 21 This is that confirming step, causing the
10:05:42 22 customer's mobile device to perform the confirming.

10:05:45 23 And we asked Dr. Conte: The only device that is
10:05:50 24 deciding whether or not the check deposit can go forward is
10:05:53 25 the server?

10:05:54 1 That's correct.

10:05:57 2 The decision, yes.

10:05:59 3 In the Wells Fargo product, comparing the

10:06:01 4 OCR-determined amount to the amount indicated by the user

10:06:04 5 is not performed on the portable device?

10:06:06 6 What he's admitting there is that there's no

10:06:10 7 infringement because one element is missing.

10:06:13 8 Now, he wants to play word games about deciding

10:06:17 9 versus validating, but it's confirming. And the work to

10:06:20 10 confirm occurs not on your phone but on the servers that

10:06:25 11 are way back in Wells Fargo's system.

10:06:27 12 There was a suggestion that somehow this patent

10:06:31 13 specification was like a word search game where we could

10:06:35 14 simply look for terms and say, well, here's a PDA, and,

10:06:38 15 therefore, that means we really invented these 2017 claims

10:06:44 16 way back in 2006.

10:06:45 17 But even Dr. Conte has to admit that PDAs only

10:06:48 18 appears twice in one of the specifications and appears not

10:06:51 19 at all in the '681.

10:06:53 20 He also never went through the claim elements of

10:06:58 21 the invention to describe how the bank was benefitted

10:07:02 22 versus how it benefitted the consumer. That's important

10:07:05 23 because the Judge just told you that to find infringement,

10:07:10 24 when you have multiple parties involved, you have to show

10:07:13 25 an element-by-element benefit. And that was not shown by

10:07:17 1 Dr. Conte or anyone else in this case.

10:07:19 2 He did not offer an opinion that the patents were
10:07:24 3 valid. This man, Mr. Calman, did that.

10:07:28 4 Now, you've heard a lot about him. He's not in
10:07:30 5 court today. He's never been in court. And the statement
10:07:33 6 was, well, we could have called him. Why would we call
10:07:38 7 him? He was their expert to supposedly do two things, to
10:07:41 8 rebut Mr. Saffici's conclusions and prove up that the
10:07:45 9 invention truly was described in the claims.

10:07:47 10 And, two, he was a man that had 20 more -- 20 or
10:07:52 11 more years in the banking industry, and he could have
10:07:54 12 talked about the benefits of the invention, the benefits
10:07:57 13 that Mr. Weinstein struggled mightily to identify for you
10:08:03 14 in the claims. But they didn't bring him to do that
10:08:06 15 either.

10:08:06 16 And it's fair to ask -- it's fair to ask: Why
10:08:09 17 didn't they? What would we -- what would he have said that
10:08:12 18 they were concerned about, especially with respect to the
10:08:15 19 alleged value of the claimed benefits of this invention?
10:08:20 20 What were they worried about him saying to you?

10:08:23 21 You heard from Mr. Easley. He had to acknowledge
10:08:26 22 that all these things they think are important about fraud
10:08:29 23 detection were, in fact, done either via the teller years
10:08:34 24 ago or through some back end processes at the time of the
10:08:39 25 asserted inventions.

10:08:40 1 They want to claim that all these things that they
10:08:42 2 say they invented in the patent provide all this great
10:08:46 3 value to mobile deposit, but they've been doing those
10:08:49 4 things for years.

10:08:50 5 All banks have been doing those things for years,
10:08:53 6 either at the teller -- when you give the check to the
10:08:56 7 teller and the person looks at it and says, okay, here's
10:08:59 8 your amount, does it match? That's what they're talking
10:09:02 9 about. That's what they're claiming to be the benefit or
10:09:05 10 value of their invention.

10:09:06 11 Next, you heard from Roy Weinstein, a capable man,
10:09:11 12 and he admitted some important things. First, there's no
10:09:14 13 one that's ever licensed these patents. The Judge tells
10:09:17 14 you that's a factor you can consider in valuing these
10:09:20 15 alleged inventions. They say they're groundbreaking. They
10:09:25 16 say they're like Apple or Google. No one's taken a license
10:09:32 17 to these inventions.

10:09:33 18 Also, explain to you how you value a patent. You
10:09:37 19 value the incremental contribution. You value what's new
10:09:40 20 about the patent, what's new about the patent that didn't
10:09:43 21 exist before.

10:09:43 22 Now, remember when Mr. Hill went over this flip
10:09:50 23 chart here, and Mr. Weinstein was on the stand. He says:
10:09:53 24 Okay. Mr. Weinstein, I will write down the new fraud
10:09:58 25 prevention features that appear in those claims that you're

10:10:01 1 valuing. I will write them down right here. There's
10:10:05 2 nothing there because he had to admit they're not in the
10:10:11 3 claims.

10:10:13 4 Something else peculiar happened with
10:10:18 5 Mr. Weinstein. He admitted that there was another damage
10:10:22 6 calculation that he kept private from you and the jury and
10:10:27 7 in court. He had done a different calculation of damages
10:10:32 8 that was \$40 million. And we asked him: Well, you didn't
10:10:36 9 show that one to the jury, did you?

10:10:38 10 Well, I wasn't asked to.

10:10:40 11 Do you believe it?

10:10:42 12 I absolutely believe in it.

10:10:46 13 You're entitled to consider why, in addition to
10:10:50 14 what Mr. Calman would have said, why didn't they present
10:10:53 15 this calculation to you? Isn't it kind of obvious? It's
10:10:57 16 much less and smaller than what they're claiming, but their
10:11:00 17 own expert said it was reliable.

10:11:03 18 Finally, Mr. Weinstein admitted what's happening
10:11:06 19 here is pretty common. Patents are often -- often
10:11:11 20 invalidated. Often. And he's worked on many cases where
10:11:15 21 that exact thing has happened.

10:11:17 22 So this notion that the presumption is important,
10:11:20 23 of course it is. The patent comes out of the Patent Office
10:11:23 24 presumed valid. But every day there are juries considering
10:11:29 25 issues just like this and finding that the patents are

10:11:30 1 invalid.

10:11:31 2 Our first witness was Mr. Al Hecht.

10:11:36 3 Now, Mr. Hecht testified for a couple of hours
10:11:38 4 about the Wells Fargo system, how it tries to claim the
10:11:43 5 value, and how Wells -- how USAA tries to talk about things
10:11:47 6 that they invented, when really they were things that were
10:11:53 7 in the Wells Fargo system for decades.

10:11:54 8 He talked about innovation, that Wells Fargo was
10:11:59 9 the first in Internet banking, was the first with remote
10:12:04 10 deposit capture, and the first with remote banking. This
10:12:06 11 is an innovative company. They don't have a monopoly on
10:12:09 12 ideas. This company -- this bank has also been innovative.
10:12:16 13 And you heard that, and it was uncontradicted.

10:12:19 14 He talked about -- and this is important -- that
10:12:21 15 checks can come in through hundreds of sources. And you
10:12:25 16 knew that. You knew that before you came into court. You
10:12:28 17 can deposit a check in an ATM. You can go to a teller and
10:12:32 18 deposit a check. A check can come in through direct
10:12:34 19 deposit. A check can be mailed in, all sorts of different
10:12:36 20 ways. And a check can come in through mobile deposit, of
10:12:39 21 course.

10:12:39 22 But he talked about and he showed you Exhibit 230.
10:12:42 23 You can ask for the exhibits. This is an important one.
10:12:45 24 Defendant's Exhibit 230, where he talks about everything on
10:12:48 25 the right there, the far right, that was a pre-existing

10:12:52 1 infrastructure. That was the work that Wells Fargo did to
10:12:56 2 process checks from whatever channel. That's not something
10:13:03 3 USAA should get paid for. That's not something they
10:13:05 4 created any value for.

10:13:06 5 And he told you that that information -- those
10:13:11 6 machines, that technology, that innovation had been in
10:13:18 7 place for decades. And there were no changes made to it
10:13:18 8 when they simply added another funnel. No changes made
10:13:21 9 after adding mobile deposit.

10:13:24 10 There was a suggestion made, and it was made again
10:13:28 11 by the Plaintiff, that somehow there was a focus on USAA,
10:13:33 12 that Wells Fargo was looking at USAA and no one else. But
10:13:36 13 you saw this document, 427. They tried to say it was only
10:13:40 14 about USAA. Well, it's actually about Chase. It's about
10:13:44 15 the market. It's about what people are doing in the
10:13:47 16 marketplace, what other banks are doing. That's 427. You
10:13:50 17 can look at that one, too.

10:13:52 18 And you heard time and again that it's totally
10:13:55 19 appropriate and normal for banks to look at what other
10:13:59 20 banks are doing, to go on YouTube, to go to conferences, to
10:14:04 21 listen to descriptions of things, to watch what other banks
10:14:07 22 are doing in the marketplace. It's why -- it's the way
10:14:10 23 business works, and the way we want it to work.

10:14:12 24 Duplicate detection. That was something that
10:14:18 25 Mr. Weinstein said was a big deal, one of the fraud

10:14:21 1 prevention features. It's been an issue since checks were
10:14:24 2 created many, many years ago. That's not something they
10:14:29 3 can claim credit for.

10:14:30 4 Now, this is something that you may remember in
10:14:33 5 the trial, and they've brought it up, and I predict they'll
10:14:36 6 bring it up again. This was something they found in our
10:14:39 7 files where we were looking at some screenshots -- some
10:14:42 8 screenshots of the USAA mobile app. And they say, well,
10:14:45 9 look at these arrows. These arrows are pointing right to
10:14:49 10 our patents.

10:14:50 11 I hope looking at this document -- ask for it,
10:14:52 12 it's 1182 -- that you'll see that that argument is just
10:14:57 13 not -- it's disrespectful. That's not what's going on
10:15:00 14 here.

10:15:00 15 As Mr. Hecht explained to you, people look at
10:15:02 16 other people's applications. And you can't learn anything
10:15:05 17 about how the system works by looking at screenshots.
10:15:11 18 That's not an X-ray into the system. That's not opening up
10:15:14 19 the code and looking at it. That was disrespectful. That
10:15:19 20 was an exaggeration meant to get you upset or think there's
10:15:24 21 something sinister, when it's nothing of the kind.

10:15:26 22 In fact, their own inventors testified. You may
10:15:29 23 remember Mr. Oakes said that they look at other competitors
10:15:33 24 all the time, and, indeed, did that when they were coming
10:15:37 25 up with their own innovations at USAA.

10:15:39 1 We brought you Mr. Saffici. He told you first why
10:15:45 2 this written description issue is so important. It's
10:15:51 3 important because we want to keep inventors honest about
10:15:53 4 their work. We don't want them to be able to create a new
10:15:56 5 patent with new claims and new ideas and claim it was
10:15:59 6 supported by earlier specifications. We don't want people
10:16:02 7 to lay in wait for 10 years -- for 10 years and then jump
10:16:11 8 in with a patent application in 2017 and claim, you know
10:16:14 9 what, I actually invented this in 2006. That's the
10:16:17 10 requirement that you must act as a check and balance on.

10:16:20 11 Yes, the patent issued, but you've got to look at
10:16:23 12 that specification and determine, does it really have what
10:16:27 13 USAA is claiming?

10:16:28 14 And we asked him: Does it describe PDAs in a way
10:16:32 15 that would suggest you could use a PDA with check
10:16:36 16 processing?

10:16:36 17 No, there's no description of that.

10:16:38 18 Is there any indication that the examiner
10:16:41 19 considered the specific issues?

10:16:43 20 Now, these file histories are lengthy, many, many
10:16:46 21 pages. Yes, they're presumed to have looked at this, but
10:16:49 22 there's no indication -- this is all he was saying --
10:16:52 23 there's no specific indication that he looked at this and
10:16:55 24 matched up these words and matched up these descriptions to
10:16:58 25 the full scope of the claims.

10:17:00 1 THE COURT: 15 minutes have been used.

10:17:04 2 MR. MELSHEIMER: So who did we ask that would know

10:17:07 3 best? Who do you think would know best about what's in

10:17:11 4 their invention? The inventors. We're the ones that

10:17:14 5 brought you most of the inventor testimony.

10:17:16 6 In addition to not bringing you Mr. Calman, they

10:17:19 7 didn't bring you any inventor live and in court. We

10:17:22 8 brought you the inventors by deposition.

10:17:26 9 You heard from Mr. Harpel. Is there a difference

10:17:29 10 between a portable device comprising a general purpose

10:17:31 11 computer and the digital camera?

10:17:32 12 Yes, the digital camera is separate from the

10:17:37 13 portable device.

10:17:38 14 And that's the whole point, folks. Their

10:17:40 15 specification talks about two devices. It doesn't describe

10:17:44 16 something that is integrated. And that's what they're

10:17:47 17 claiming their patents cover.

10:17:52 18 Do either of those patents describe any computing

10:17:54 19 device with the camera integrated in the same device as the

10:17:57 20 computer processor?

10:17:58 21 This man was the inventor. Don't you think they

10:18:01 22 had him pore over that specification before his deposition?

10:18:04 23 Don't you think when asked this question, if he really

10:18:07 24 invented this back in 2006, he'd say, you know, I know

10:18:12 25 exactly where that is. It's Column 5. It's Line 17. He

10:18:16 1 couldn't do that because it's not in there.

10:18:18 2 Webcams. They said, well, we were using webcams.

10:18:25 3 But it's important to remember the webcam was a separate

10:18:30 4 piece of hardware that you would plug into the computer.

10:18:32 5 They would be separate from the computer. It wasn't part

10:18:35 6 of the computer.

10:18:35 7 And we -- finally, Mr. Morlen, we talked to him,

10:18:41 8 another inventor. He said there's no discussion in this

10:18:44 9 patent of an integrated computer and image capture device,

10:18:47 10 which they are claiming now is the breadth of their patent,

10:18:49 11 and it's not in there.

10:18:53 12 No inventor, folks. No inventor testified that

10:18:56 13 the specification describes a mobile device and a camera

10:18:59 14 together, not Mr. Oakes, not Mr. Huth, not Mr. Harpel, not

10:19:04 15 Mr. Morlen.

10:19:05 16 We brought you Dr. Villasenor. He explained why

10:19:09 17 the accused Wells Fargo product does not infringe, because

10:19:16 18 it's missing that one key element. And one element is

10:19:19 19 enough to be missing.

10:19:20 20 And you finally heard from Mr. Gerardi, who

10:19:25 21 apportioned what Mr. Weinstein didn't do. He didn't look

10:19:29 22 at the value of the claimed improvements. He didn't look

10:19:33 23 at the value of what was new in the invention. He just

10:19:43 24 said, well, fraud detection, fraud prevention, that sounds

10:19:47 25 valuable, doesn't it? We want our checks to be protected

10:19:52 1 from fraud.

10:19:53 2 But the problem is you can't get paid for
10:19:55 3 something you didn't invent, and you shouldn't get paid for
10:19:59 4 something you didn't invent. It's not fair, and it's not
10:20:02 5 respectful.

10:20:02 6 One other exhibit I want to you to look at if you
10:20:11 7 want to ask for it, in addition to the patents, is
10:20:12 8 Exhibit 36, Exhibit 230, and Exhibit 267 -- the patents,
10:20:18 9 Exhibit 36, 230, and 267. Those are all exhibits that will
10:20:22 10 show you that these fraud prevention features, these
10:20:26 11 duplicate detection matters, these are all old, old
10:20:31 12 technology that predate these patents.

10:20:36 13 And when you're thinking about this blank page
10:20:39 14 where Mr. Weinstein could not identify the -- in the claims
10:20:44 15 where this value was, it's because he knew that that was
10:20:52 16 not something that had actually been invented.

10:20:55 17 Now, there's other evidence, of course, and you
10:20:57 18 should consider all of it fairly in using your common
10:21:01 19 sense.

10:21:02 20 Ms. Williams is now going to speak to you about
10:21:04 21 how the evidence fits into the charge. I want to say one
10:21:07 22 thing to you, though. Sometimes things come to you at the
10:21:10 23 very end. I've been driving back and forth to court, and
10:21:13 24 there's a store on the corner of Alamo and Houston Street
10:21:18 25 that's called the Computer Box store. And I drive by it

10:21:24 1 every day coming to court. And the sign on the store says
10:21:28 2 "everything." That's what the window says, "everything."

10:21:35 3 Now, I don't think that -- they claim to have
10:21:36 4 everything. But if you looked inside the store, I bet you
10:21:40 5 find that they don't. And that's the story of these
10:21:44 6 patents in this case. They want to claim something very
10:21:45 7 broad that's everything, but when you really look inside,
10:21:51 8 they've got some things missing.

10:21:52 9 Thank you very much for your time. I appreciate
10:21:55 10 it.

10:22:10 11 MS. WILLIAMS: May it please the Court. Good
10:22:11 12 morning.

10:22:11 13 THE COURT: Proceed.

10:22:12 14 MS. WILLIAMS: Now that Mr. Melsheimer has
10:22:15 15 reviewed the evidence with you, I want to take the time to
10:22:19 16 see how the law that Judge -- Judge Gilstrap gave you
10:22:22 17 applies to it.

10:22:22 18 There are four questions on the verdict form. The
10:22:27 19 first question is: Did USAA prove by a preponderance of
10:22:31 20 the evidence that Wells Fargo infringed any of the asserted
10:22:35 21 claims?

10:22:35 22 The Court's instructions say that if a product is
10:22:40 23 missing even one element or limitation of a claim, it does
10:22:44 24 not meet all of the requirements of the claim and is not
10:22:47 25 covered by the claim. If a product is not covered by the

10:22:52 1 claim, it does not infringe that claim.

10:22:54 2 And, here, Wells Fargo Mobile Deposit is missing
10:22:59 3 one element from every claim of the '681 patent, the
10:23:05 4 confirming step.

10:23:06 5 Wells Fargo does not do the confirming step on the
10:23:11 6 device. It is on the server. And because of that, there
10:23:16 7 is no infringement.

10:23:19 8 Dr. Villasenor also informed you about another
10:23:23 9 important requirement that applies in a case like this.

10:23:29 10 As the Court just instructed you, infringement
10:23:32 11 requires that a single party be responsible for
10:23:39 12 infringement of the claim. But both Dr. Conte and
10:23:43 13 Dr. Villasenor agree that the claims of the patents at
10:23:46 14 issue here require that both the mobile device and the bank
10:23:51 15 servers do certain things. That means the claim is
10:23:56 16 divided.

10:23:57 17 That's the way USAA chose to write the claim. And
10:24:01 18 there's nothing wrong with that. But what that means here
10:24:03 19 is that, because the claim is divided, USAA must also prove
10:24:08 20 that Wells Fargo combines the elements of the claims, even
10:24:16 21 if it doesn't make each individual component or Wells Fargo
10:24:20 22 controls the system and obtains benefits from it. And that
10:24:24 23 means it obtains benefits from each and every element of
10:24:31 24 the claimed system.

10:24:32 25 The Court instructed you that it's USAA's burden

10:24:34 1 to prove that, and USAA called one witness, one witness, to
10:24:41 2 prove infringement, Dr. Conte.

10:24:43 3 And Dr. Conte simply didn't do this analysis.

10:24:53 4 He was asked: You think in your direct
10:24:56 5 examination, you went through each element and explained
10:24:58 6 how it benefitted the bank versus how it benefitted the
10:25:01 7 customer?

10:25:02 8 And his answer was: Oh, no, I didn't do that.

10:25:07 9 And Dr. Villasenor checked Dr. Conte's work, and
10:25:10 10 he also concluded that Dr. Conte didn't do that.

10:25:12 11 Dr. Conte did not perform the analysis that the
10:25:19 12 law requires.

10:25:20 13 So for Question 1 on the verdict form, Wells Fargo
10:25:25 14 does not infringe any claim of either patent, and so the
10:25:29 15 answer to Question No. 1 is no.

10:25:32 16 The second question is: Did Wells Fargo prove by
10:25:39 17 clear and convincing evidence that any of the following
10:25:42 18 asserted claims are invalid?

10:25:43 19 As the Court instructed you, even though the
10:25:48 20 Patent Office granted these patents, you and you alone have
10:25:56 21 the ultimate responsibility for deciding the validity of
10:26:01 22 the claims in this case.

10:26:02 23 USAA filed these patents on July 28th, 2017, for
10:26:10 24 an invention it claims it invented in 2006. The evidence
10:26:16 25 presented to you this week shows that these patents are not

10:26:20 1 entitled to go back 10 years to Halloween 2006.

10:26:27 2 And why is that? Because USAA can't claim in 2017
10:26:31 3 what it didn't write down in 2006.

10:26:36 4 The law says the specification is required to
10:26:39 5 contain a written description of the claimed invention
10:26:42 6 telling what the invention is, how it works, how to make
10:26:47 7 it, and how to use it. And that is because under our laws,
10:26:50 8 the written description requirement helps ensure that the
10:26:56 9 patent applicant actually -- actually invented the claimed
10:27:01 10 subject matter.

10:27:02 11 The law says that exact words don't need to be in
10:27:06 12 there, but to satisfy -- to satisfy the written description
10:27:13 13 requirement, the patent specification must describe each
10:27:16 14 and every limitation of the patent claim in sufficient
10:27:21 15 detail.

10:27:22 16 Now, USAA, I expect, is going to try and focus
10:27:27 17 your attention on a part of the law that says you don't
10:27:30 18 have to spell out every detail. And I expect they may show
10:27:38 19 you some of this on Page 17 of the charge. And I want you
10:27:42 20 to watch for it because I think they'll only show you half
10:27:46 21 of a sentence from this charge on written description.

10:27:49 22 The law says a lot more than that. And this
10:27:57 23 Court's charge in this very sentence says more than that.
10:28:00 24 The law requires enough detail in the specification to
10:28:04 25 convince persons of ordinary skill in the art that the

10:28:07 1 inventor -- inventor possessed the full scope of the
10:28:11 2 invention -- the full scope of the invention.

10:28:13 3 The Court said the specification must describe the
10:28:17 4 claimed invention in such a way that a person of ordinary
10:28:21 5 skill in the art would understand that the larger category
10:28:25 6 that is being claimed has been invented and not just the
10:28:28 7 single example.

10:28:30 8 In this case, the only evidence presented to you
10:28:34 9 in this trial on written description was from Mr. Saffici.
10:28:40 10 He told you the old specifications only cover a general
10:28:46 11 purpose computer and an image capture device.

10:28:49 12 But in 2017, USAA claimed more than that. In
10:28:54 13 2017, USAA claimed the -- the original invention and
10:28:58 14 something new, something it did not describe in the 2006
10:29:03 15 specifications, a mobile device with a digital camera.

10:29:07 16 USA -- USAA wants to go on a word search, but it's
10:29:13 17 not enough to find the words disjointed in the patents. As
10:29:17 18 I told you in opening statement, context matters. And
10:29:21 19 Mr. Saffici is the only person -- the only person who took
10:29:26 20 that stand as an expert qualified from -- qualified by this
10:29:31 21 Court to put those words in context for you.

10:29:34 22 And Mr. Saffici, with his 53 years of hands-on
10:29:38 23 experience in this exact area of technology, told you that
10:29:45 24 the old specifications do not support USAA's new claims to
10:29:50 25 a mobile device with a camera or a portable device with a

10:29:55 1 camera together in a single unit.

10:29:56 2 Members of the jury, clear and convincing evidence
10:30:00 3 of this is right there in your notebook. Figure 1 of both
10:30:07 4 the patents shows a general purpose computer at 111 and a
10:30:11 5 separate image capture device at 212.

10:30:15 6 They are not shown in a single unit, and you will
10:30:19 7 not find them described in the specifications as a single
10:30:24 8 unit anywhere.

10:30:26 9 Here, in Figure 3 from the '605 patent -- excuse
10:30:35 10 me, here, Figure 3 in the '605 patent describes the image
10:30:40 11 capture device as a scanner, as a digital camera, but in
10:30:46 12 both cases as a device, with communication connections to
10:30:57 13 couple a general purpose computer as shown in a separate
10:30:59 14 Figure 2 that has been shown to you throughout this trial,
10:31:08 15 and it is in your notebook.

10:31:09 16 USAA points you to this passage in '605 -- in the
10:31:13 17 '605 patent about PDAs. But there's nothing in here about
10:31:15 18 using a PDA, an MP3 player, or a television for check
10:31:25 19 deposit. The use of the word "PDA" in the specification no
10:31:29 20 more discloses the full scope of the invention in the
10:31:31 21 claims than the mention of the word "dormitories" does.

10:31:38 22 When we look at Figure 4, nothing discloses
10:31:40 23 depositing checks with a PDA. There is nothing about the
10:31:46 24 specification in either one of these patents that discloses
10:31:48 25 the full scope of the claims in the patents. The

10:31:53 1 specification is the foundation -- the foundation of the
10:31:57 2 claims. Here, USAA filed claims 10 years after the --
10:32:03 3 after the fact without adequate foundation.

10:32:05 4 Every USAA employee, every USAA inventor testified
10:32:14 5 that USAA was not working on mobile phones in 2006. USAA
10:32:22 6 didn't start until 2007. Instead, in 2006 -- in 2006, when
10:32:27 7 USAA wrote its old specification, the foundation of
10:32:30 8 everything that we've been talking about this week, USAA
10:32:34 9 was only connecting two separate devices.

10:32:39 10 Not a single inventor took the stand to say
10:32:45 11 otherwise. Not a single inventor took the stand to tell
10:32:48 12 you the specification describes a mobile phone or a mobile
10:32:52 13 device and a camera together. Not one.

10:32:55 14 And not a single witness testified that the
10:32:59 15 patents were valid. The only witness to testify on the
10:33:03 16 issue of validity was Mr. Saffici.

10:33:06 17 Because the patents are not entitled to that old
10:33:13 18 Halloween 2006 date, the earliest priority date they can
10:33:19 19 have is July 28th, 2017. And because of that, the old 2006
10:33:23 20 patents anticipate the asserted patents, and the asserted
10:33:26 21 patents are invalid.

10:33:27 22 Mr. Saffici wasn't confused. He's the only person
10:33:32 23 who applied the standards of invalidity in this case and
10:33:37 24 the only person who testified regarding validity in this
10:33:42 25 case.

10:33:43 1 So for Question 2, all the claims rise and fall
10:33:46 2 together. Each claim is invalid. So the answer to
10:33:51 3 Question 2 for each claim is yes.
10:33:54 4 The third question, if you get to it, is: Did
10:34:01 5 USAA prove by a preponderance of the evidence that the
10:34:04 6 infringement you found in Question 1 was willful? The law
10:34:08 7 says to be willful, you must find that Wells Fargo acted
10:34:13 8 egregiously, willfully, or wantonly.
10:34:17 9 And when we look at the totality of the
10:34:19 10 circumstances, there is no willfulness here. Here, the
10:34:21 11 patents issued in 2018, and USAA sued Wells Fargo just
10:34:27 12 weeks after the patents issued.
10:34:29 13 The case is important to Wells Fargo, and the
10:34:31 14 rights to challenge USAA's patents is important to Wells
10:34:35 15 Fargo. There has been no evidence that Wells Fargo has
10:34:38 16 acted reckless -- in reckless disregard or in callous
10:34:43 17 disregard to USAA's rights to these patents that issued in
10:34:48 18 July 2018.
10:34:49 19 The answer to Question No. 3 is no.
10:34:56 20 The fourth question is: What sum of money if paid
10:35:01 21 now in cash has USAA proven by a preponderance of the
10:35:06 22 evidence would compensate USAA for its damages resulting
10:35:10 23 from infringement beginning on August 17th, 2018, through
10:35:14 24 the date of trial?
10:35:15 25 You only reach this question if you find that the

10:35:19 1 patents are infringed and not invalid. And we don't think
10:35:24 2 you're going to reach this question.

10:35:26 3 But if you do reach this question, then USAA has
10:35:29 4 the burden to establish the amount of damages by a
10:35:34 5 preponderance -- preponderance of the evidence.

10:35:36 6 USAA has to prove its damages just like it has to
10:35:39 7 prove its other issues in this case. If it's not proven,
10:35:45 8 they haven't met their burden.

10:35:47 9 The law requires that the amount of damages must
10:35:52 10 be based on the value attributable to the patented
10:35:56 11 technology alone.

10:36:00 12 USAA's expert agrees that the value is this
10:36:03 13 incremental contribution, what is new about the patent that
10:36:10 14 didn't exist before. And if you don't claim it in the
10:36:14 15 claims, a damages expert can't attribute value to it.

10:36:18 16 Now, Mobile Deposit is something that is important
10:36:22 17 to Wells Fargo. That's what table stakes means. But what
10:36:29 18 they're claiming as value, these fraud prevention features,
10:36:33 19 that's not a table stake. That's old technology.

10:36:35 20 THE COURT: Five minutes remaining.

10:36:40 21 MS. WILLIAMS: Repeating a saying, like a buzz
10:36:43 22 word, does it change the fact that what you have to value
10:36:45 23 here is what is claimed in the patent? And that is true
10:36:47 24 for the \$40 million number and the hundred million dollar
10:36:51 25 number.

10:36:53 1 The only credible evidence presented on damages is
10:37:01 2 from Wells Fargo, from Mr. Gerardi, and he went through his
10:37:03 3 three-step process for the apportionment.

10:37:05 4 He took into consideration things that aren't
10:37:09 5 claimed in the invention, including the hard work of Wells
10:37:12 6 Fargo to put together the systems that it uses, including
10:37:15 7 the fact that USAA hasn't licensed its patents to anyone,
10:37:20 8 and determined that a reasonable royalty -- excuse me, a --
10:37:25 9 determined that the damages in this case are \$3.98 million
10:37:29 10 for a lump sum for the patents. And that is the only
10:37:35 11 credible -- credible evidence that has been presented to
10:37:37 12 you.

10:37:38 13 If you reach Question 4, the answer is no more
10:37:42 14 than 3.98 million for a lump-sum license -- excuse me, 3.98
10:37:52 15 million for compensation.

10:37:56 16 Members of the jury, USAA has a simple strategy.
10:38:00 17 You've seen it all week. You've seen it this morning.
10:38:03 18 You're going to see it when I sit down, and I don't have a
10:38:06 19 chance to stand up again. USAA's strategy is to create a
10:38:09 20 false narrative. Like I said in opening, sound bites
10:38:13 21 create a lot of drama, but they don't help us get to the
10:38:17 22 truth.

10:38:17 23 And how have they executed this strategy? Well,
10:38:21 24 overstate your rights. Patents are constitutional rights.
10:38:24 25 That's not true.

10:38:25 1 Patent rights are absolute. That's not true.

10:38:28 2 Wells Fargo's only choices are to vacate or ask

10:38:30 3 permission. That is not true.

10:38:32 4 The Patent Office issued the patents so written --

10:38:36 5 written description can't be questioned. That is not true.

10:38:39 6 These patents provide new fraud prevention

10:38:42 7 protections. That is not true.

10:38:44 8 These patents are as big as the iPhone and as

10:38:47 9 important as the Google search engine and worth a hundred

10:38:51 10 million dollars. That is not true.

10:38:53 11 Step 2 in the strategy has been to mischaracterize

10:38:57 12 the documents and the testimony showing only parts of

10:39:01 13 documents and only parts of definitions. You were here

10:39:05 14 yesterday and saw -- and saw it from the start of the day

10:39:07 15 to the end of the day. Confront witnesses with consistent

10:39:12 16 and incomplete quotes. Suggest normal business activities

10:39:17 17 are misdeeds when their own inventor said he did the exact

10:39:22 18 same thing. Unfairly malign and disrespect witnesses to

10:39:26 19 make them look bad. Repeatedly saying buzz words like

10:39:31 20 "table stakes," suggesting that it's a misdeed. Flashing

10:39:35 21 big numbers up that have no connection to any actual value

10:39:38 22 relevant to the inventions in this case.

10:39:41 23 And the third step has been to hide the motives

10:39:44 24 and those who could actually provide the information. We

10:39:47 25 don't bring all the actual inventors who might actually say

10:39:51 1 live in court that the 2006 specification never envisioned
10:39:56 2 mobile phones with cameras. Ignore the new patents are all
10:39:59 3 about mobile phones. Forget what the 2006 specification
10:40:02 4 says. And ignore the obvious motive to snare your
10:40:06 5 competitors with new claims tacked on 10 years later.

10:40:11 6 You are the check and balance. This is an
10:40:13 7 important dispute. We respect the process. We respect
10:40:19 8 your part in this process. They are counting on this
10:40:23 9 process not to work the way it's supposed to.

10:40:27 10 Everyone will go home after your verdict. Your
10:40:37 11 verdict will send USAA home with one of two messages.
10:40:43 12 Either you can't claim in 2017 what you didn't write down
10:40:47 13 in 2006, or you got away with it. Please don't let them
10:40:54 14 get away with it.

10:40:56 15 Thank you.

10:40:56 16 THE COURT: Plaintiff may now present its final
10:41:02 17 closing argument.

10:41:10 18 MR. SHEASBY: Ladies and gentlemen of the jury,
10:41:16 19 the first question you will be asked to consider is
10:41:21 20 infringement. There was no discussion whatsoever of the
10:41:27 21 '605 patent in Wells Fargo's 40 minutes of presentation.
10:41:31 22 There's a reason for that. They have no technical basis on
10:41:35 23 which to dispute the infringement of the '605 patent.

10:41:38 24 Now, there is an interesting argument, and the
10:41:41 25 interesting argument is that Wells Fargo doesn't control

10:41:44 1 and benefit from the system that it constructs. That's
10:41:49 2 what they're trying to tell you.

10:41:50 3 Well, let's look at the evidence. Professor
10:41:54 4 Conte, who is the only expert who analyzed it, said
10:41:57 5 expressly that Wells Fargo ultimately controls the software
10:41:59 6 and the hardware. That was Wells -- that was USAA's --
10:42:03 7 Dr. Conte's analysis. It was not disputed.

10:42:06 8 Do you really think a bank with more branches and
10:42:09 9 more tellers than any other bank in the United States that
10:42:14 10 is using a system to, as Ms. Lockwood say -- says, generate
10:42:20 11 at least a dollar every time the system is used, doesn't
10:42:24 12 control and benefit from each element of that system?

10:42:26 13 One of your most powerful tools is common sense.
10:42:30 14 What does common sense tell you about their claim that it's
10:42:34 15 their customer's fault and that they don't control and
10:42:38 16 benefit from each element of the system?

10:42:40 17 The next question you must consider is
10:42:46 18 willfulness. You can still be liable for infringement even
10:42:47 19 if you are willful.

10:42:48 20 And Mr. -- Mr. Melsheimer said two things, and I
10:42:53 21 wrote them down because they were important to me.

10:42:55 22 First, he said that USAA laid in wait for 10
10:43:00 23 years. But that has no connection to reality because
10:43:06 24 Mr. Hecht, Wells Fargo's corporate representative, although
10:43:11 25 he first denied it, admitted that since 2007 -- '10,

10:43:17 1 they've been tracking our patents.

10:43:18 2 The reason why this is occurring now is because
10:43:20 3 USAA took the right steps, as Mr. Brady explained. We went
10:43:23 4 to the Patent Office. We re-presented our claims, and we
10:43:28 5 asked them to confirm the scope of our right.

10:43:29 6 The reason why there are no licenses is because
10:43:31 7 the step we have to take to get Wells Fargo, the bank with
10:43:37 8 more branches and more tellers than -- and more ATMs than
10:43:41 9 other banks in the United States to take responsibility for
10:43:43 10 its conduct is a federal court. And we wish that wasn't
10:43:46 11 the case.

10:43:47 12 But when we approached them about licensing, what
10:43:50 13 you heard happen, even though Wells Fargo's corporate
10:43:53 14 representative didn't even know about it, we were forced to
10:43:58 15 come here.

10:43:58 16 Now, Mr. Melsheimer said something else which I
10:44:02 17 think is very important. He says we're an innovative
10:44:05 18 company. Well, words are just words. We have the
10:44:10 19 confidential records from Wells Fargo's executives, which
10:44:14 20 admit that they had no capability to create this system.
10:44:18 21 That's what's in the record.

10:44:20 22 And then he said something else. He said this is
10:44:23 23 just the way business works. This is the way we want
10:44:27 24 business to work.

10:44:30 25 Let me be very clear. Leveraging USAA's designs

10:44:36 1 is maybe the way Wells Fargo's business works, but it's not
10:44:40 2 the way USAA's business works. And it's not the way
10:44:43 3 business in the United States should work.

10:44:46 4 Wells Fargo had no right to leverage the labor of
10:44:50 5 the Applied Research Division, and they have no right to
10:44:53 6 come here and stand here and tell you, that's just the way
10:44:57 7 it works, folks. That's how business works. That's how we
10:45:00 8 want business to work.

10:45:01 9 The next issue you're going to be asked to decide
10:45:06 10 is validity. And one of the things that I think is really
10:45:12 11 important is to understand what this invention is about.

10:45:17 12 One of the issues I struggled with throughout this
10:45:20 13 week is I could never get an explanation from any Wells
10:45:25 14 Fargo witness, why does it matter for the invention whether
10:45:28 15 the camera is separate or connected? What's this invention
10:45:32 16 about? This invention is about using a digital camera,
10:45:36 17 connecting it to a general purpose processor, and then
10:45:39 18 using software so that you can control that camera to
10:45:42 19 cap -- capture the picture. That's the powerful insight,
10:45:45 20 the sophisticated software system that was created.

10:45:48 21 Nothing turns on the number of boxes you have.
10:45:52 22 And because nothing turns on the number of boxes you have,
10:45:55 23 the specification said we don't care. Communicatively
10:46:00 24 couple it any way you want. That's what makes it powerful.

10:46:04 25 They're turning the power of the insight of the

10:46:08 1 inventors and using it as a criticism. Wells Fargo doesn't
10:46:13 2 recognize something because they're not USAA. Wells Fargo
10:46:18 3 made its members buy these expensive scanners.

10:46:22 4 And what did we do to our members? We created a
10:46:25 5 foundation that can be used with any digital device you can
10:46:29 6 imagine. And 10 years from now, when there's a different
10:46:32 7 digital device, this system can still use it. And that was
10:46:37 8 the power in 2006.

10:46:45 9 Mr. Saffici admitted this was novel and
10:46:49 10 non-obvious. If this wasn't an invention, if this wasn't
10:46:53 11 powerful, if what we invented was old, then how could it be
10:46:59 12 novel and non-obvious?

10:47:00 13 Common sense.

10:47:04 14 Dr. Conte pointed to the specification, pointed
10:47:07 15 that it expressly said any device a consumer can use, as
10:47:13 16 long as it has a camera, we can meet you where you are.
10:47:17 17 And he testified under oath, without contradiction, that
10:47:21 18 everyone knew in 2006 that consumer devices had digital
10:47:26 19 cameras as part of them.

10:47:27 20 Mr. Saffici -- this is his testimony. This is his
10:47:35 21 testimony under oath. You said that the specification
10:47:39 22 teaches that the handheld device may include a digital
10:47:41 23 camera?

10:47:41 24 For the last 40 minutes they have been trying to
10:47:49 25 convince you that this specification doesn't teach a

10:47:51 1 digital device that can include -- a handheld device that
10:47:57 2 can include a digital camera. Literally, they've spent the
10:48:01 3 last 40 minutes trying to teach you that. And their own
10:48:04 4 witness admitted it repeatedly on the stand.

10:48:07 5 Figure 3. Figure 3 shows a device that
10:48:13 6 Mr. Saffici was -- admitted -- admitted to on examination
10:48:16 7 has within it an image capture apparatus and a general
10:48:20 8 purpose processing device. It can be connected directly to
10:48:24 9 a server, it can be connected to another computer, and it's
10:48:28 10 all in one box.

10:48:29 11 Now, why is USAA's inventors teaching it this way?
10:48:34 12 Why are they teaching it all in one box? And the reason is
10:48:38 13 because they don't care. They don't care because they meet
10:48:44 14 their members where they are, and that's exactly what the
10:48:51 15 specification teaches in Figure 3. Connect it directly to
10:48:55 16 a server, connect it to another computer, we don't care
10:48:58 17 because we are here to meet you.

10:49:00 18 Mr. Brady said it clear. It was irrelevant to
10:49:07 19 USAA what physical box housed the digital camera. It's not
10:49:10 20 relevant to our goals, and it's not relevant to the goals
10:49:13 21 of the patents. And you didn't hear one witness, one
10:49:16 22 witness that said the number of boxes you use has any
10:49:21 23 connection to any of the issues, any of the problems of
10:49:26 24 image quality that this patent is so focused on.

10:49:32 25 One of the most striking comments that was made in

10:49:35 1 the last 40 minutes is the claim that no inventor -- that
10:49:39 2 all the inventors testified that they didn't do any work on
10:49:42 3 mobile phones before 2007.

10:49:44 4 Now, let me -- 2007. Now, let me be absolutely
10:49:47 5 clear. That is an irrelevant argument. It's a
10:49:52 6 distraction. It doesn't matter what devices we use because
10:49:55 7 the system we built works with all devices. It just so
10:50:00 8 happens to be inaccurate.

10:50:01 9 Mr. Oakes, the head of Applied Research, made it
10:50:04 10 clear that before October of 2006, USAA was already
10:50:08 11 experimenting with mobile phones. It's irrelevant. It's
10:50:13 12 legally irrelevant, but it is unfortunately the case that I
10:50:19 13 have to stand here and show that statements that were made
10:50:22 14 to you just minutes ago have no connection whatsoever to
10:50:26 15 reality or to the record in this case.

10:50:28 16 The last issue we're going to discuss is damages.
10:50:46 17 Here's what the record evidence shows. \$3.50 when we use
10:50:51 18 their ATM. 60 cents when we use the Zelle system they
10:50:57 19 partially own.

10:50:58 20 What does USAA get? Wells Fargo says you get
10:51:03 21 3 cents, you get a cent. You should feel lucky. That's
10:51:08 22 just the way business works, USAA.

10:51:09 23 I respectfully submit you -- to you that's not the
10:51:13 24 way business works. The reality is that Wells Fargo's own
10:51:16 25 expert admit -- Wells Fargo's own corporate representative

10:51:19 1 admits that in just one year, it saved between 60 and
10:51:24 2 \$120 million from using mobile remote deposit capture.

10:51:29 3 And what's interesting about that analysis is it
10:51:36 4 actually does exactly what Wells Fargo said should be done.
10:51:40 5 Wells Fargo said we shouldn't get any credit for the back
10:51:45 6 end. We shouldn't get any credit for the back end that
10:51:48 7 they said existed before.

10:51:49 8 But if you remember, they told you that all the
10:51:52 9 different routes, teller, ATM, MRDC, all feed into the same
10:51:59 10 background. They use that phrase funnels within funnels.

10:52:04 11 This is what the analysis shows. All these three
10:52:07 12 channels use the same back end. It's \$2.40 for the teller.
10:52:13 13 It's \$1.41 for the ATM. And it's 35 cents for MRDC.

10:52:20 14 The front end. The MRDC system that USAA
10:52:24 15 developed saves Wells Fargo between a dollar and \$2.00
10:52:29 16 every single time it uses it. That's what's in the record.
10:52:32 17 And there are 120 million infringing deposits using this
10:52:36 18 system -- 120 million during the damages period alone.

10:52:42 19 A second way you can think about value is that
10:52:49 20 Wells Fargo made \$1.2 billion solely during the damages
10:52:55 21 period from the MRDC system, in profits.

10:53:01 22 And by the way, even Wells Fargo's own expert who
10:53:04 23 says we get a penny and we should feel lucky for it
10:53:08 24 admitted that Wells Fargo made \$339 million from the MRDC
10:53:15 25 system alone in just one year.

10:53:23 1 THE COURT: You have five minutes remaining,
10:53:25 2 counsel.

10:53:25 3 MR. SHEASBY: The reason for that power is because
10:53:31 4 the claims at issue --

10:53:36 5 Can I have Slide 55, Mr. Huynh?

10:53:40 6 -- are not narrow. They're not trivial. They're
10:53:45 7 broad for the foundation of MRDC, which is what Wells
10:53:52 8 Fargo's expert has admitted.

10:53:57 9 I -- when we talked on Monday, at the end of it, I
10:54:01 10 talked about how the fact that I wanted you to think of
10:54:04 11 jury service as not just a duty but a right. And I've been
10:54:10 12 thinking about that a lot more this week, which is that
10:54:12 13 this has been a hard week. It's been very long. It's been
10:54:17 14 very complicated.

10:54:19 15 But 231 years ago, the founders placed this in our
10:54:23 16 hands. They placed the responsibility to decide very
10:54:28 17 important questions in our hands.

10:54:30 18 And it remains that way today, and it will remain
10:54:35 19 that way in the future for as long as we have our republic.
10:54:40 20 And I think that's something sacred. I think this power in
10:54:45 21 your hands is very important. USAA is in your hands. Our
10:54:53 22 members are in your hands. Chuck Oakes, the Applied
10:54:58 23 Research decision -- division is in your hands. The
10:55:01 24 decades of research, the hundreds of millions of dollars
10:55:04 25 that led to this are in your hands.

10:55:07 1 Ladies and gentlemen of the jury, this case is --
10:55:09 2 this case is in your hands, and I thank you for your time.
10:55:13 3 And USAA thanks you.

10:55:16 4 THE COURT: All right. Ladies and gentlemen, I'd
10:55:24 5 like to give you a few final instructions before you begin
10:55:27 6 your deliberations.

10:55:28 7 You must perform your duty as jurors without bias
10:55:33 8 or prejudice as to any party. The law does not permit you
10:55:37 9 to be controlled by sympathy, prejudice, or public opinion.
10:55:43 10 All parties expect that you will carefully and impartially
10:55:47 11 consider all the evidence, follow the law as I have given
10:55:53 12 it to you, and reach a just verdict, regardless of the
10:55:57 13 consequences.

10:55:58 14 Answer each question in the verdict form based on
10:56:01 15 the facts as you find them to be, following the
10:56:04 16 instructions that the Court has given you on the law. As
10:56:10 17 I've said, do not decide who you think should win the case
10:56:13 18 and then answer the questions to reach that result. Again,
10:56:18 19 I remind you, your answers and your verdict must be
10:56:21 20 unanimous.

10:56:22 21 You should consider and decide this case as a
10:56:29 22 dispute between parties of equal standing in the community,
10:56:33 23 equal worth, and holding the same or similar stations in
10:56:35 24 life. This is true in patent cases between corporations,
10:56:39 25 partnerships, other business entities, and individuals.

10:56:43 1 A patent owner is entitled to protect his rights
10:56:46 2 under the laws of the United States. And this includes
10:56:49 3 bringing a suit in a United States District Court for money
10:56:53 4 damages for infringement.

10:56:56 5 The law recognizes no distinction amongst types of
10:57:00 6 parties. All corporations, partnerships, and other
10:57:03 7 business organizations stand equal before the law,
10:57:08 8 regardless of their size, regardless of who owns them, and
10:57:11 9 they are to be treated as equals.

10:57:13 10 Now, when you retire to the jury room to
10:57:16 11 deliberate on your verdict, as I've told you, you'll each
10:57:19 12 have a written copy of these final jury instructions to
10:57:22 13 take with you.

10:57:24 14 If during your deliberations you desire to review
10:57:27 15 any of the exhibits -- not the demonstratives, but the
10:57:32 16 exhibits which the Court has admitted into evidence, then
10:57:35 17 you should advise me by a written note signed by your
10:57:38 18 foreperson and delivered to the Court Security Officer who
10:57:41 19 will bring it to me. I will then send you that exhibit or
10:57:45 20 those exhibits.

10:57:47 21 Once you retire, you should first select your
10:57:50 22 foreperson and then conduct your deliberations. If you
10:57:57 23 recess during your deliberations, follow all the
10:58:00 24 instructions that the Court has given you about your
10:58:02 25 conduct during the trial.

10:58:04 1 After you've reached a unanimous verdict, your
10:58:06 2 foreperson is to fill in your answers to the questions in
10:58:10 3 the verdict form reflecting your unanimous decisions.
10:58:15 4 Do not reveal your answers until -- until such
10:58:18 5 time as you're discharged or otherwise directed by me. And
10:58:22 6 you must never disclose to anyone, not even to me, your
10:58:26 7 numerical division on any unanswered question.
10:58:29 8 Your notes, if you've taken them over the course
10:58:34 9 of the trial, are aids to your memory only. If your memory
10:58:37 10 should differ from your notes, then rely on your memory and
10:58:40 11 not your notes. The notes are not evidence, and a juror
10:58:45 12 who has not taken notes should rely on his or her own
10:58:48 13 independent recollection of the evidence and not be unduly
10:58:52 14 influenced by the notes of other jurors.
10:58:54 15 Notes are not entitled to any greater weight than
10:58:57 16 the recollection or impression of each juror about the
10:59:02 17 testimony.
10:59:02 18 If you want to communicate with me at any time
10:59:08 19 during your deliberations, you should give a written
10:59:11 20 question or a message to the jury -- or, excuse me, to the
10:59:13 21 Court Security Officer, signed by the jury foreperson, and
10:59:16 22 the Court Security Officer will then bring it to me.
10:59:18 23 I'll then re -- reply to you as promptly as
10:59:25 24 possible, either in writing or by having you brought back
10:59:28 25 into the jury -- into the courtroom where I can address you

10:59:31 1 orally.

10:59:32 2 I will always disclose to the attorneys in the
10:59:35 3 case for both parties your question and my response before
10:59:37 4 I answer your questions.

10:59:39 5 After you have reached a verdict and I have
10:59:43 6 discharged you from your role as jurors, you're not
10:59:47 7 required to talk with anyone about your service in this
10:59:49 8 case. But at that point, you will be free to talk with
10:59:53 9 anyone of your choosing about your service in the case.
10:59:57 10 That decision at that time will be yours and yours alone to
11:00:01 11 make.

11:00:01 12 I'm now going to hand one clean copy of the
11:00:05 13 verdict form and eight written copies of these instructions
11:00:08 14 to the Court Security Officer to deliver to the jury in the
11:00:11 15 jury room.

11:00:13 16 Ladies and gentlemen of the jury, you may now
11:00:25 17 retire to the jury room to deliberate. We await your
11:00:28 18 verdict.

11:00:29 19 COURT SECURITY OFFICER: All rise.

11:00:31 20 (Jury out.)

11:00:32 21 THE COURT: Counsel, you are welcome to wait here
11:00:58 22 in the courtroom or the courthouse. I also understand that
11:01:03 23 you may wish to wait at locations away from the courthouse.
11:01:08 24 That's perfectly fine.

11:01:10 25 The Court has in its possession a cell phone

11:01:13 1 number for Mr. Bunt and Mr. Hill. In the event I need to
11:01:17 2 contact you upon receipt of a question or return of a
11:01:20 3 verdict, I'll call Mr. Bunt, and I'll call Mr. Hill to
11:01:24 4 notify each trial team. So those lawyers should have their
11:01:28 5 cell phones charged and turned on.

11:01:30 6 Also, I'm going to ask each side to select one
11:01:34 7 cell phone number from a member of its trial team that I
11:01:38 8 can give to the jury after I meet with them after I've
11:01:41 9 accepted their verdict so that they may, if they elect,
11:01:46 10 call that person to discuss their service as jurors and to
11:01:51 11 discuss the trial, if they choose to do so.

11:01:53 12 So if you will, among yourselves, pick one
11:01:56 13 person's name and phone number and give that to me and my
11:02:00 14 staff during the deliberations so I can give that to the
11:02:04 15 jury after I've accepted their verdict and before they
11:02:06 16 leave the courthouse.

11:02:07 17 They may choose to call and discuss their service.
11:02:10 18 They may not. But that's an additional option I've
11:02:14 19 recently been giving them, rather than them stopping you
11:02:19 20 outside on the front steps to talk about their service as
11:02:22 21 jurors.

11:02:22 22 All right. Counsel, awaiting either a question
11:02:26 23 from the jury or the return of a verdict, we stand in
11:02:29 24 recess.

11:02:30 25 COURT SECURITY OFFICER: All rise.

11:02:33 1 (Recess.)

02:09:10 2 (Jury out.)

02:09:10 3 COURT SECURITY OFFICER: All rise.

02:09:11 4 THE COURT: Be seated, please.

02:18:05 5 Counsel, the Court's received the following

02:18:24 6 message from the jury:

02:18:26 7 Quote, we have a verdict.

02:18:28 8 And it's signed by Mr. Johns, who, as I recall, is

02:18:34 9 Juror No. 3, as the foreperson.

02:18:36 10 I'm going to mark this -- since we've not received

02:18:40 11 any notes from the jury previously, I'm going to mark this

02:18:43 12 as Item 1, and I'll hand it to the courtroom deputy to be

02:18:46 13 included in this case.

02:18:47 14 All right. I'm about to bring the jury in and

02:18:51 15 receive the verdict.

02:18:52 16 As indicated, I'll remind everybody there should

02:18:57 17 be no outburst or audible or visual expressions no matter

02:19:02 18 what the result is.

02:19:04 19 All right. Is there any reason from either

02:19:09 20 Plaintiff or Defendant I should not bring the jury in and

02:19:12 21 receive the verdict at this time?

02:19:15 22 MR. SHEASBY: Nothing from Plaintiffs, Your Honor.

02:19:16 23 MR. HILL: No, Your Honor.

02:19:17 24 THE COURT: Let's bring in the jury, please,

02:19:20 25 Ms. Denton.

02:19:23 1 COURT SECURITY OFFICER: All rise.

02:19:34 2 (Jury in.)

02:19:37 3 THE COURT: Please be seated.

02:19:48 4 Mr. Johns, I understand that you're the foreperson

02:19:57 5 of the jury; is that correct?

02:19:59 6 THE FOREPERSON: Yes, sir.

02:20:00 7 THE COURT: Has the jury reached a unanimous

02:20:02 8 verdict?

02:20:03 9 THE FOREPERSON: Yes, sir, we have.

02:20:05 10 THE COURT: Will you hand the completed form to

02:20:07 11 the Court Security Officer, who will bring it to me?

02:20:13 12 All right. Ladies and gentlemen, I'm going to

02:21:02 13 announce the verdict into the record at this time. And I'd

02:21:06 14 like to ask each member of the jury to listen very

02:21:10 15 carefully as I announce the record publicly -- the verdict

02:21:16 16 publicly. Because after I've done that, I'm going to poll

02:21:19 17 the jury to make sure that this is the unanimous verdict of

02:21:21 18 all eight members of our jury.

02:21:23 19 Turning to the verdict form, and beginning on

02:21:30 20 Page 4 where Question 1 is located: Did USAA prove by a

02:21:37 21 preponderance of the evidence that Wells Fargo infringed

02:21:40 22 any of the asserted claims?

02:21:42 23 The jury's answer is: Yes.

02:21:45 24 Turning to Page 5 where Question 2 of the verdict

02:21:51 25 form is located: Did Wells Fargo prove by clear and

02:21:55 1 convincing evidence that any of the following asserted
02:21:58 2 claims are invalid?

02:22:00 3 The jury has answered "no" to every one of the
02:22:09 4 claims, being Claims 1, 3, 11, 12, 13, 14, and 22 of the
02:22:17 5 '605 patent, and Claims 12, 13, 14, 20, 22, and 30 of the
02:22:24 6 '681 patent.

02:22:24 7 Turning then to Page 6 of the verdict form wherein
02:22:30 8 Question 3 is found: Did USAA prove by a preponderance of
02:22:36 9 the evidence that the infringement you found in Question
02:22:38 10 No. 1 was willful?

02:22:40 11 The jury's answer is: Yes.

02:22:44 12 Turning then to Page 7 wherein Question 4 is
02:22:52 13 found: What sum of money, if any, paid now in cash has
02:22:57 14 USAA proven by a preponderance of the evidence would
02:22:58 15 compensate USAA for its damages resulting from infringement
02:23:03 16 beginning on August the 17th, 2018, and through the date of
02:23:08 17 trial?

02:23:09 18 The jury's answer is: \$102 million --
02:23:21 19 \$102,792,510.00. I'll say that again. \$102,792,510.00.

02:23:30 20 Turning to the last page of the verdict form,
02:23:35 21 Page 8, I find that it's dated with today's date, and it's
02:23:39 22 signed by Mr. Travis Johns as foreperson of the jury.

02:23:41 23 Ladies and gentlemen of the jury, let me poll you
02:23:46 24 to make sure on the record that this is the unanimous
02:23:49 25 verdict of all eight members of the jury.

02:23:52 1 If this is your verdict as I have read it, would
02:23:56 2 you please stand?

02:23:58 3 (Jury polled.)

02:24:04 4 THE COURT: Thank you. Please be seated.

02:24:05 5 Let the record reflect that all eight members of
02:24:13 6 the jury immediately rose and stood in response to the
02:24:15 7 Court's question to poll them with regard to the unanimous
02:24:18 8 nature of the verdict, and the Court finds that this
02:24:20 9 verdict is the unanimous verdict of all eight members of
02:24:24 10 the jury.

02:24:24 11 The Court accepts the verdict, and I'll deliver
02:24:27 12 the original verdict to the courtroom deputy to be included
02:24:30 13 in the papers of this cause.

02:24:32 14 Ladies and gentlemen, that now -- this now
02:24:36 15 completes the trial of this case. From the very beginning,
02:24:40 16 I have instructed you, probably more times than you wanted
02:24:43 17 to hear, about not discussing this case with anyone and not
02:24:47 18 discussing it with each other until you retire to
02:24:50 19 deliberate.

02:24:50 20 I'm releasing you from those instructions, and I'm
02:24:53 21 releasing you from all the instructions I've given you. In
02:24:57 22 fact, I'm discharging you as jurors in this case.

02:25:00 23 That means, ladies and gentlemen, you're
02:25:02 24 absolutely free to talk about this case and your service
02:25:05 25 with anyone you'd like to. That also means you don't have

02:25:08 1 to talk to anybody about this case or your service if you
02:25:11 2 don't want to. The -- the decision is yours 100 percent
02:25:17 3 and no one else's.

02:25:18 4 And I will tell you that the custom and practice
02:25:21 5 in this court, at least for more than 35 years, because it
02:25:25 6 was that way when I started practicing law here in 1981, is
02:25:28 7 that members of this trial team, who would very much like
02:25:32 8 to know what you thought about the trial, whether they're
02:25:34 9 on the winning side or the losing side, would very much
02:25:38 10 like to have your input. But they are not able to initiate
02:25:40 11 a conversation with you. That's the practice here.

02:25:43 12 If they're going to hear from you in any regard,
02:25:47 13 it's going to be because -- it's going to be because you
02:25:50 14 chose to initiate a conversation with them.

02:25:52 15 That's your choice. And I suspect that, unless
02:25:58 16 the rain has already started, they'll probably be out on
02:26:02 17 the front steps as you leave the courthouse in hopes that
02:26:05 18 you want to stop and talk with them.

02:26:07 19 If you do, stop and talk. I promise you, they'll
02:26:10 20 be interested to hear from you.

02:26:12 21 If you don't want to discuss it, don't stop and
02:26:14 22 talk. No one's going to stop -- stop you. No one's going
02:26:17 23 to try to initiate a conversation with you. Again, it's
02:26:20 24 completely your decision.

02:26:21 25 Also, ladies and gentlemen, I want to tell you how

02:26:26 1 much the Court appreciates your service in this case. This
02:26:30 2 has been -- this has been a hard week for all of us, but
02:26:33 3 especially for you.

02:26:35 4 Many of you have had to drive a great distance to
02:26:38 5 get here every day and to get home at night. You stayed
02:26:42 6 late, as I told you we would, in hopes that we could get
02:26:45 7 this done in a week and not extend it into another week.

02:26:48 8 You've all made an important -- an important and a
02:26:51 9 significant sacrifice, and you've rendered a very important
02:26:55 10 public service by serving on this jury.

02:26:57 11 And I think it's worthy of -- of recognition,
02:27:01 12 appreciation, and thanks.

02:27:03 13 As a matter of fact, ladies and gentlemen, it's my
02:27:06 14 practice, since I've been on the bench, whenever I receive
02:27:09 15 a verdict in a case like this and I've accepted that
02:27:12 16 verdict and discharged the jury, to ask the jury to do me a
02:27:15 17 favor. I'm going to ask you to do me that favor right now.

02:27:19 18 And, that is, before you leave the building, I'd
02:27:21 19 like you, as you get up out of these seats in a few
02:27:25 20 minutes, I'd like you to go back to the jury room and let
02:27:27 21 me come into the jury room because I would like to shake
02:27:30 22 each one of your hands. I'd like to look each one of you
02:27:34 23 in the eye and tell you personally thank you for your
02:27:36 24 service to our nation and to the judiciary by serving in
02:27:40 25 this case as jurors.

02:27:41 1 I promise I won't keep you. But if you would
02:27:44 2 afford me a personal privilege of that type, I think it's
02:27:48 3 worthy of personal, individualized thanks for what you've
02:27:53 4 done.

02:27:53 5 And after that, you'll be free to go.

02:27:57 6 All right. I've accepted the verdict in this
02:28:02 7 case.

02:28:03 8 Ladies and gentlemen, if you'll meet me in the
02:28:05 9 jury room, I will be right there in just a moment.

02:28:08 10 Counsel, this case is now closed, and you are
02:28:11 11 excused.

02:28:12 12 The Court stands in recess.

02:28:14 13 COURT SECURITY OFFICER: All rise.

02:28:15 14 (Court adjourned.)

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1 CERTIFICATION
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4 I HEREBY CERTIFY that the foregoing is a true and
5 correct transcript from the stenographic notes of the
6 proceedings in the above-entitled matter to the best of my
ability.

7
8
9 /S/ Shelly Holmes _____
10 SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
11 Expiration Date: 12/31/20

1/10/2020
Date

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